Supreme Court, U.S.
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No. 06-333

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In The
Supreme Court of the United States

PHELPS DODGE CORPORATION,

Conditional Cross-Petitioner,

vs.

SAN CARLOS APACHE TRIBE; STATE OF ARIZONA; GILA RIVER INDIAN COMMUNITY; ASARCO LLC; SAN CARLOS IRRIGATION AND DRAINAGE DISTRICT; CITY OF SAFFORD; GILA VALLEY IRRIGATION DISTRICT; FRANKLIN IRRIGATION DISTRICT; SALT RIVER PROJECT; CITY OF GOODYEAR; BHP COPPER INCORPORATED, and UNITED STATES OF AMERICA,

Cross-Respondents.

On Petition For Writ Of Certiorari To The Arizona Supreme Court

PHELPS DODGE CORPORATION'S CONDITIONAL CROSS-PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Did the Arizona Supreme Court err when it found that claim preclusion did not bar the San Carlos Apache Tribe from seeking additional rights to waters from the Gila River's tributaries where the tributaries were within the geographic scope of the *Globe Equity* adjudication in which the United States sought determination of all the Tribe's rights to the waters of the tributaries and where the *Globe Equity* parties did not split their claims to the tributaries through an express and clear statement in the consent decree?

PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE STATEMENT PURSUANT TO RULE 29.6

As set forth in the San Carlos Apache Tribe's (the "Tribe") Petition for Writ of Certiorari, No. 06-173, at p. ii, thousands of parties have filed claims in *In Re the General Stream Adjudication of All Rights to Use Water in The Gila River System and Source*, W-1, W-2, W-3, W-4 (consolidated) (the "Gila River Adjudication"), but have not filed notices of appearance or participated in the Contested Case W1-206 from which this Conditional Cross-Petition arises.

The Parties to the W1-206 contested case who participated and appeared in the proceeding before the Arizona Supreme Court, Case Number WC-02-0003IR, are the Petitioner San Carlos Apache Tribe (the "Tribe"), the Respondents United States of America, the Gila River Indian Community (the "Community"), ASARCO LLC, San Carlos Irrigation and Drainage District, the City of Safford, Gila Valley Irrigation District, Franklin Irrigation District, Salt River Project, City of Goodyear and BHP Copper Incorporated, and Respondent/Conditional Cross-Petitioner Phelps Dodge Corporation ("Phelps Dodge").

Phelps Dodge has the following parent corporations:

None

Publicly held companies that own 10% or more of Phelps Dodge's stock are the following:

None

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Phelps Dodge's Conditional Cross-Petition raises an important issue fundamental to the efficient and effective operation of our judicial system – the finality of court judgments. More than one hundred years ago, this Court recognized that the finality of judgments ensures

> the very object for which civil courts have been established, which is to secure the peace and repose of society by the settlement of matters capable of judicial determination. Its enforcement is essential to the maintenance of social order; for the aid of judicial tribunals would not be invoked for the vindication of rights of persons and property if, as between parties and their privies, conclusiveness did not attend the judgments of such tribunals.

Southern Pac. R.R. Co. v. United States, 168 U.S. 1, 49 (1897). This Court has further recognized that "[c]ertainty of rights is particularly important with respect to water rights in the Western United States. The development of that area of the United States would not have been possible without adequate water supplies in an otherwise water-scarce part of the country." *Arizona v. California*, 460 U.S. 605, 620 (1983) ("*Arizona II*"). Indeed, "[t]he policies advanced by the doctrine of *res judicata* perhaps are at their zenith in cases concerning real property, land and water." *Nevada v. United States*, 463 U.S. 110, 129 n. 10 (1983).

In accordance with these policies, the doctrine of claim preclusion, also known as *res judicata*, provides that

> when a final judgment has been entered on the merits of a case, '[i]t is a finality as to the claim or demand in controversy, concluding parties and those in privity with them, not only as to every matter which was offered and received to sustain

> or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose.'

Id. at 129-30 (quoting *Cromwell v. County of Sac*, 94 U.S. 351, 352 (1876)). This is true even if the earlier judgment may have been wrong or rested on a legal principle subsequently overruled in another case. *Federated Dept. Stores, Inc. v. Moitie*, 452 U.S. 394, 398 (1981).

The Arizona Supreme Court decided this important question of federal law in a manner that conflicts with the decisions of this Court in *Nevada* and *Arizona II*. The Arizona Supreme Court held that claim preclusion did not bar the Tribe, or the United States on its behalf, from seeking in the Gila River Adjudication rights to waters from the tributaries[1] of the Gila River in excess of the water rights awarded to the Tribe in the consent decree[2]

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[1] As explained later, when Phelps Dodge uses the term "tributaries," it means those tributaries within the scope of the *Globe Equity* litigation, except the San Carlos River. The scope of the *Globe Equity* litigation is the Gila River beginning ten miles east of Arizona's border with New Mexico and terminating at the Gila's confluence with the Salt River. The term "tributaries" also excludes the San Carlos River for the Tribe because the United States expressly excluded the San Carlos River in two paragraphs of the Amended Complaint when describing the rights it was seeking for the Tribe. Phelps Dodge has taken no position on what was intended by this exclusion. Various parties, including the Tribe, the Community, and ASARCO have claimed rights to the San Carlos River. The Arizona Supreme Court rejected ASARCO's claim, *In Re the General Adjudication of All Rights to Use Water in The Gila River System and Source*, 127 Ariz. P.3d 882, 893 at ¶¶ 35-36 (Ariz. 2006) ("*Gila VI*"), and decided not to address the claims between the Tribe and the Community. *Id.* at 903 n. 25.

[2] The doctrine applies to matters decided by consent decree as well as to those resolved through actual litigation. *See Nevada*, at p. 118 (recognizing that the *Orr Ditch* Decree adopted the parties' settlement agreement); *see also*, 1B James W. Moore, et al., MOORE'S FEDERAL

(Continued on following page)

("Decree" or "*Globe Equity* Decree") entered in *United States v. Gila Valley Irrigation District, et al.*, Globe Equity 59 ("*Globe Equity*"). Accordingly, Phelps Dodge respectfully requests that this Court grant its Conditional Cross-Petition and issue a Writ of Certiorari to review the decision of the Arizona Supreme Court entered on February 9, 2006 in the event this Court grants the Petition by the Tribe.

OPINION BELOW

The Opinion and Order of the Arizona Supreme Court is reported in *In Re the General Adjudication of All Rights to Use Water in The Gila River System and Source*, 127 P.3d 882 (Ariz. 2006) ("*Gila VI*").[3]

JURISDICTION

The decision of the Arizona Supreme Court was filed on February 9, 2006. The decision of the Supreme Court denying the Tribe's Motion for Reconsideration was filed on May 3, 2006. The Tribe's Petition was docketed on August 3, 2006. This Conditional Cross-Petition is being filed within the timeframe set forth in Rule 12(5), Rules of the Supreme Court. This Court has jurisdiction under 28 U.S.C. § 1257(a).

PRACTICE ¶ 0.409[5] (2d ed. 1996) ("The [consent] judgment is not, like the settlement agreement out of which it arose, a mere contract inter parties. The court is not properly a recorder of contracts; it is an organ of government constituted to make judicial decisions, and when it has rendered a consent judgment it has made an adjudication.").

[3] The Opinion is attached as Appendix A to the Tribe's Petition.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

No constitutional or statutory provisions are involved.

STATEMENT OF THE CASE

I. PROCEEDINGS BELOW

In the Gila River Adjudication,[4] the Superior Court instituted Contested Case No. W1-203 regarding the preclusive effect of the *Globe Equity* Decree[5] upon the Community. The court referred contested case W1-203 to the Special Master. Motions for Summary Judgment were filed by various parties, and the Special Master issued his

[4] For a history of the Gila River Adjudication, see the following cases: *In Re the General Adjudication of All Rights to Use Water in The Gila River System and Source*, 35 P.3d 68 (Ariz. 2001) ("*Gila V*"); *In Re the General Adjudication of All Rights to Use Water in The Gila River System and Source*, 9 P.3d 1069 (Ariz. 2000) ("*Gila IV*"), *cert. denied*, 530 U.S. 1250 (2000); *In Re the General Adjudication of All Rights to Use Water in The Gila River System and Source*, 989 P.2d 739 (Ariz. 1999) ("*Gila III*"); *In Re the General Adjudication of All Rights to Use Water in The Gila River System and Source*, 857 P.2d 1236 (Ariz. 1993) ("*Gila II*"); *In Re the General Adjudication of All Rights to Use Water in The Gila River System and Source*, 830 P.2d 442 (Ariz. 1992) ("*Gila I*"); *see also Arizona v. San Carlos Apache Tribe of Arizona*, 463 U.S. 545 (1983); *United States v. Superior Court*, 697 P.2d 658 (Ariz. 1985).

[5] For a history of the *Globe Equity* litigation, see the following cases: *United States v. Gila Valley Irrigation Dist.*, 117 F.3d 425 (9th Cir. 1997); *United States v. Gila Valley Irrigation Dist.*, 31 F.3d 1428 (9th Cir. 1994); *United States v. Gila Valley Irrigation Dist.*, 961 F.2d 1432 (9th Cir. 1992); *United States v. Gila Valley Irrigation Dist.*, 959 F.2d 242 (9th Cir. 1992) (unpublished); *United States v. Gila Valley Irrigation Dist.*, 454 F.2d 219 (9th Cir. 1972); *Gila Valley Irrigation Dist. v. United States*, 118 F.2d 507 (9th Cir. 1941); *United States v. Gila Valley Irrigation Dist.*, 920 F.Supp. 1444 (D. Ariz. 1996); *United States v. Gila Valley Irrigation Dist.*, 804 F.Supp. 1 (D. Ariz. 1992).

report. The Superior Court, after objections and oral argument, ruled that the doctrine of claim preclusion barred the Community from claiming additional water from the mainstream of the Gila River, but not its tributaries.[6]

In addition to the W1-203 matter, the Superior Court instituted contested case W1-206 to determine the preclusive effect of prior court decisions and agreements upon various parties, including the Tribe and the United States on its behalf. Numerous motions for summary judgment were filed. After oral argument, the Superior Court ruled that the Tribe's claims to additional water from the Gila River were precluded to the extent consistent with the Court's findings and conclusions as set forth in the W1-203 March 7, 2002 Amended Order.[7]

The Tribe filed a Petition for Interlocutory Review to the Arizona Supreme Court, and Phelps Dodge filed a Conditional Cross-Petition for Interlocutory Review. After allowing review, the Arizona Supreme Court held that the *Globe Equity* Decree precluded the Tribe from seeking additional waters from the mainstream of the Gila River but not its tributaries. *Gila VI*, at 903, ¶ 83.

II. STATEMENT OF FACTS

A. THE SAN CARLOS RESERVATION AND SETTLEMENT ALONG THE GILA RIVER

The San Carlos Apache Reservation (the "Reservation") was established by Executive Order on December 14,

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[6] Appendix D to the Tribe's Petition, Order, *nunc pro tunc*, dated March 7, 2002 (the "Amended Order").

[7] Appendix C to the Tribe's Petition, Order dated May 17, 2002.

1872. At about this same time, upstream settlers in the Safford and Duncan-Virden Valleys and downstream settlers in the Florence-Casa Grande area began farming along the Gila River and diverting water from the river for irrigation. After these upstream diversions began, federal authorities and members of the Tribe complained that the Apache Indians were being deprived of water that was rightfully theirs.

B. THE SAN CARLOS IRRIGATION PROJECT

In 1916 and 1924 the United States Congress appropriated funds to build an irrigation project for the benefit of the Community and farmers in the Florence-Casa Grande area. The project, known as the San Carlos Irrigation Project ("SCIP"), included construction of the Ashurst-Hayden Diversion Dam and the Coolidge Dam.[8] The project included storing water in the San Carlos Reservoir and making that stored water available to the Community and farmers in the San Carlos Irrigation and Drainage District ("SCIDD"). One of the purposes of the United States in bringing the *Globe Equity* litigation was to settle these water rights as well as the Community's and the Tribe's water rights.

C. THE *GLOBE EQUITY* LITIGATION

On October 2, 1925, the United States, on behalf of itself, the Community, and the Tribe, filed a Bill of Complaint ("Complaint") in the United States District Court for the District of Arizona to adjudicate the rights to the

[8] The 1916 project was initially called the Florence-Casa Grande Project and included the construction of the Ashurst-Hayden Diversion Dam and related canals. The 1924 Act expanded the scope of the original project and merged it into SCIP.

waters of the Gila River.[9] The Complaint named as defendants the Gila Valley Irrigation District ("GVID"), the Franklin Irrigation District ("FID"), various canal companies, farmers, and diverters in the Safford and Duncan-Virden Valleys ("Upper Valley Defendants" or "UVDs"), and other diverters along the Gila River. Over 950 defendants were named in the litigation.

The Complaint alleged, among other things, that the United States had "reserved and appropriated . . . all of the waters of the said Gila River and its tributaries . . . which may be necessary for the economic and successful irrigation and cultivation" of reservation lands. The Complaint requested that the Court "determine the relative rights of the parties hereto . . . in to and of the waters of the said Gila River and its tributaries in Arizona and New Mexico."

Two years after filing the original complaint, the United States filed an Amended Complaint, again naming the UVDs and other diverters along the Gila River.[10] The Amended Complaint also named additional parties as defendants who diverted water only off the tributaries of the Gila, including Phelps Dodge.[11]

The United States limited the geographic scope of the *Globe Equity* litigation to the area between ten miles east of the Arizona line to the confluence of the Gila River with the Salt River.[12] The confluence is at the western edge of

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[9] Appendix 1, hereto, the Bill of Complaint.

[10] Appendix 2, hereto, Amended Complaint dated December 5, 1927.

[11] Appendix 2 at ¶ 5.

[12] Based upon the United States not seeking to adjudicate the water rights of the Salt River, the Tribe has always been able to make claim for reserved water rights to the Salt River and its tributaries,

(Continued on following page)

the Gila River Indian Reservation and after the other tributaries join the Gila River, therefore bringing the tributaries within the litigation's geographic scope:

> the Gila River as it flows between a line 10 miles east of and parallel to the dividing line between Arizona and New Mexico, and the confluence of the Salt River with the Gila River, and after the following tributaries of the Gila River: the San Francisco River, the San Carlos River, the San Pedro River, and the Santa Cruz River, respectively, have joined the mainstream.[13]

The United States also recognized that the Defendants "claimed some right to divert water from the Gila River . . . or the said Defendants claim some right to store the water of said river, *or of some tributary thereof*, either within or above the stretch of the same as just described."[14]

The United States pled a number of theories, including aboriginal rights based on possession and occupancy,[15] implied reserved water rights,[16] treaty

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including the Black River, which forms the northern border of the Reservation. In the Gila River Adjudication, the Tribe in fact has settled its claims to the Salt River, and the settlement was approved by Congress. San Carlos Settlement Act of 1992, P.L. 102-575, as amended. This settlement and legislation gives the Tribe 76,445 acre-feet of water per year, the ability to store water in the San Carlos Reservoir, money for capital projects, and rights to groundwater on the Reservation.

[13] Appendix 2 at ¶ 15.

[14] Appendix 2 at ¶ 15.

[15] Appendix 2 at ¶¶ 20, 21.

[16] Appendix 2 at ¶¶ 20, 21, 30, 31.

rights,[17] and prior appropriation rights.[18] The United States claimed these rights for the entire reservation.[19]

The United States treated the Tribe's rights to one tributary differently by expressly excluding the San Carlos River in two paragraphs of the Amended Complaint:

> These [Apache] Indians are entitled by their rights at occupancy and possession and on account of the reservation thus made to sufficient water for the irrigation of the lands deemed necessary for them to irrigate from the Gila River, *excluding the San Carlos River*, three thousand (3,000) acres of land. . . .[20]
>
> * * *
>
> The Indians of said San Carlos reservation irrigated with the waters of the Gila River, *exclusive of the waters of the San Carlos River*, through a number of ditches on their reservation . . .[21]

For relief, the United States requested in the Amended Complaint

> [t]hat the Court, by its decree, *determine the rights of the parties hereto to the waters of said river* ***and its tributaries*** and the right of said parties to divert water from said river with an area aforesaid and for storage above, to the end that it may be known how much of said waters may be diverted from said river by the parties

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[17] Appendix 2 at ¶ 18.

[18] Appendix 2 at ¶ 21.

[19] Appendix 2 at ¶¶ 11, 20, 30, and 31.

[20] Appendix 2 at ¶ 9(b).

[21] Appendix 2 at ¶ 10.

hereto and for what purposes, where, by means of diversion and with what priorities.[22]

D. DEFENDANTS DIVERTING ONLY FROM THE TRIBUTARIES WERE DISMISSED

On January 29, 1932, the United States entered into a stipulation with defendants Phelps Dodge and Arizona Copper Company that the Amended Complaint would be dismissed as to those two defendants. Thereafter, the Court entered an order dismissing Phelps Dodge and several other defendants from the *Globe Equity* litigation, without prejudice, because the interests of those defendants were "outside the territorial scope of this suit as it was and is defined in the Amended Complaint" and because the dismissed defendants were included in the action "through inadvertence and mistake." These dismissals make no mention of dismissing the claims of the United States on behalf of the Tribe to the tributaries.

E. THE PARTIES SETTLED THE *GLOBE EQUITY* LITIGATION

After the Amended Complaint was filed, the United States and the UVDs engaged in settlement negotiations. During the negotiations, the representatives of the United States agreed to settle the United States' claim on behalf of the Tribe, as asserted in the Amended Complaint, for 6,000 acre-feet of water per year to serve 1,000 acres on the Reservation. The government's rationale for these actions was stated as follows:

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[22] Appendix 2 at p. 33.

The Apache claim presented difficulties. There, neither the Indians, nor the Government for them, were irrigating from the river, and irrigation there from that source in all the past has not been great; the Indians did not have an irrigating history; and very important and discouraging to the Government side was the physical situation which precluded irrigation from the river at a reasonable cost and the fact that the Government not only was prosecuting no plans for such irrigation but had none.

The claim was made, as I recall it, for the total reasonably irrigable area, 3,000 acres needing 37½ second feet of water.

As will be seen, the Government had a weak case. If the court had had an opportunity to rule on it nothing might have been given, especially unless a reasonable plan for using some amount of water could have been suggested. Since none such had been adopted, apparently, either before or after the San Carlos Act, the case as a case was weak.

The determination of the settlement I think especially advantageous. The reservation is given enough water for 1000 acres with a priority second only to that of the Pimas. Also, since there is so little prospect of the right being usable due to the physical situation of the lands on the reservation and immediately above it and the requirement of law that changes of point of diversion, etc., can only be made to the extent that they do not injure others, a plan was devised and is embodied in the decree whereby the Upper Valleys may get rid of the menace of this right if the Indians wish to sell it.

> Under this plan the right would be held merely as a support to San Carlos Project and Upper Valley rights as against other claimants in the stream, but would not be used otherwise. [23]

Shortly thereafter, Attorney General Homer Cummings wrote a letter to Harold Ickes, the Secretary of the Interior, outlining the major issues arising in the negotiations over the Decree. In the letter, Cummings reiterated Truesdell's sentiments:

> Article VI also deals with the rights claimed by the Government on behalf of the Apache Indians of the San Carlos Reservation. The situation regarding these Indians is quite different from that occupied by the Pimas. Very little irrigation has been done by them. They have no irrigation history, but little of the land is susceptible of water service from the river, and no plans appear to have been made by the Government in regard to irrigation in their behalf. The amended bill of complaint calls for the irrigation of 3,000 acres with priorities subsequent to those of the Pimas. Any case which might be made by the Government for the Apaches would be a weak one, and it is not likely that if submitted to judicial determination, more than a negligible quantity would be allocated to them. Viewing these conditions in a practical way, it has been decided to fix the area for the allocation of water rights at 1,000 acres with a diversion right of 12½ cubic feet per second. This is considered advantageous in view of the other primary rights claimed by

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[23] Memorandum from John Truesdell, attorney for the United States, to the Commissioner of Indian Affairs and the Solicitor of the Interior Department (March 26, 1934) at 4.

> the Government in the suit. The provision also is made to inure to the benefit of the so-called upper valleys lands in this, that they are under certain conditions specified, allowed to acquire this right for a money consideration.[24]

The negotiations resulted in a settlement that was documented in a draft consent decree. The draft consent decree, which a federal attorney understood to "definitely determine [] the rights of all landowners on the river," was reviewed and approved by both the United States Attorney General and the Secretary of Interior.

F. THE DECREE

United States District Court Judge Sames entered the proposed consent decree, as signed by both the Secretary of Interior and the Attorney General, on June 29, 1935.[25] The preamble states

> *[t]hat the plaintiff and the parties defendant* whose claims and rights have been presented by answer or stipulation and *remain for determination herein, have concluded and settled all issues in this cause* as between plaintiff and said parties defendant, and as between said defendants and each of them and every other thereof, and mutually have agreed . . . that such settlement should be embodied in and confirmed and made effective

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[24] Letter from Cummings to Ickes, May 3, 1934 at 4; *see also* Memorandum from Iverson to Blair (May 24, 1934) at 15 ("Opinion has been expressed by a number of parties on the Government side of this case that in the event of submission upon the facts, the court would allow little, if any, water for Apache lands.").

[25] Supplemental Appendix at p. 103 to the Tribe's Petition, Final Decree, *Globe Equity*.

> by way of the within decree of the Court in this cause defining and adjudicating their claims and rights as against each other in identical form and substance as hereinafter set forth. . . .[26]

The schedule of priorities in Article V lists diversion rights on the Gila River. For the Tribe the schedule identifies the "Lands for which rights acquired" as the entire "San Carlos Indian Reservation."[27] Article VI of the Decree establishes the United States' rights on behalf of the Tribe as follows:

> (2) The right, on behalf of the Apache and other Indians of the San Carlos Indian Reservation, their descendants, successors and assigns, to divert 6,000 acre feet of the waters of the Gila River, during each irrigation season, from the natural flow in said river at diversion points on said river within said reservation – or above the eastern boundary thereof under such rights of way as may now exist or be acquired therefor; due measures being taken to avoid injuries to other water users by said last mentioned diversions, – as of a date of priority of the year 1846 and to the extent that such waters are available under said priority – at a rate of diversion not exceeding 12.5 cubic feet per second at any time during such season, for the reclamation and irrigation of *1000 acres of the irrigable lands within the said reservation* (or in part or wholly within

[26] Supplemental Appendix at p. 118 to the Tribe's Petition.

[27] Supplemental Appendix at p. 126 to the Tribe's Petition.

> the valley of the Gila River above the eastern boundary of said Reservation, if lands are there acquired by the United States for that purpose), situated in the County of Graham, State of Arizona, and more particularly described as within said reservation and that portion of the valley of the Gila River above the San Carlos Reservoir and flow line thereof; . . . [28]

Article XIII of the Decree states in part

> *[t]hat each and all of the parties* to whom rights to water are decreed in this cause (and the persons, estates, interests and ownerships represented by such thereof as are sued in a representative capacity herein), their assigns and successors in interest, servants, agents, attorneys and all persons claiming by, through, or under them and their successors, *are hereby forever enjoined and restrained from asserting or claiming* – as against any of the parties herein, their assigns or successors, or their rights as decreed herein – *any right, title or interest in or to the waters of the Gila River,* ***or any thereof***, except the rights specified, determined and allowed by this decree, *and each and all thereof are hereby perpetually restrained and enjoined from diverting, taking or interfering in any way with the waters of the Gila River* or ***any part thereof***, so as in any manner to prevent or interfere with the diversion, use or enjoyment of said waters by the owners of prior or superior rights therein as defined and established by this Decree; . . . that

[28] Supplemental Appendix at p. 198 to the Tribe's Petition.

the Court retains jurisdiction hereof for the limited purposes above described, this decree otherwise being deemed a final determination of the issues in this cause and of the rights herein defined.[29]

G. THE TRIBE AND UNITED STATES HAVE CLAIMED SIGNIFICANTLY MORE WATER IN THE GILA ADJUDICATION THAN AWARDED UNDER THE DECREE

In the Gila Adjudication, the Tribe has asserted claims for a total of 775,292 acre-feet per year from the Upper Gila River Watershed for the Reservation.[30] In the Gila Adjudication, the United States, on behalf of the Tribe, has asserted claims to a total of 174,526 acre-feet per year from the Gila River for that portion of the Reservation within the Gila River watershed.[31]

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[29] Supplemental Appendix at p. 225 to the Tribe's Petition.

[30] Supplemental Appendix at p. 42 to the Tribe's Petition. Statement of Claimant of the Tribe, No. 39-63614, filed November 1, 1985 and Addendum to Tribe Statement of Claimant; While this Statement of Claimant and Addendum is for "the Upper Gila River Watershed," it appears to include some claims to the Salt River because the Tribe's Statement of Claimant for the Salt River includes the same Addendum. *See* Statement of Claimant No. 39-12676, filed September 16, 1985. Consequently, it is difficult to identify specifically how much water the Tribe claims from the Gila River alone. For purposes of this matter, however, it is sufficient to state that the Tribe has asserted claims in the Adjudication that exceed its entitlement under the *Globe Equity* Decree.

[31] Supplemental Appendix at p. 82 to the Tribe's Petition, Statement of Claimant of the United States No. 39-64259, filed November 1, 1985, and Water Rights Claim of the United States as Trustee for the San Carlos Apache Tribe, attached to the Statement of Claimant ("Attachment").

REASONS FOR GRANTING THE CONDITIONAL CROSS-PETITION

I. THE ARIZONA SUPREME COURT MIS-APPLIED THE FEDERAL LAW OF CLAIM PRECLUSION

The Arizona Supreme Court misapplied the federal law of claim preclusion:

> We deal today with the issue of claim preclusion, formerly referred to as *res judicata*. 'Simply put, the doctrine of *res judicata* provides that when a final judgment has been entered on the merits of a case, it is a finality to the claim or demand in controversy, concluding parties and those in privity with them . . . as to every matter which was offered and received to sustain or defeat the claim or demand . . . '

Gila VI, 127 P.2d at 887, ¶ 14 (quoting *Nevada*, 463 U.S. at 129-30 (quoting *Cromwell*, 84 U.S. at 352)). The Arizona Supreme Court selectively quoted from this Court's rule of claim preclusion:

> Simply put, the doctrine of *res judicata* provides that when a final judgment has been entered on the merits of a case, '[i]t is a finality as to the claim or demand in controversy, concluding parties and those in privity with them, ***not only*** as to every matter which was offered and received to sustain or defeat the claim or demand, ***but as to any other admissible matter which might have been offered for that purpose***.

Nevada, at 129-130 (quoting *Cromwell*, 94 U.S. at 352) (emphasis added). As this Court also explained in *Arizona II*, claim preclusion bars "'parties from contesting matters that they had a full and fair opportunity to litigate'" in a

previous action. *Arizona II*, 460 U.S. at 619 (quoting *Montana v. United States*, 440 U.S. 147, 153-54 (1979)). The Arizona Supreme Court expressly failed to apply this Court's test of claim preclusion because it found the rule only applies to matters actually offered and received to sustain and defeat the claim.

This Court has on two occasions held that the failure of the United States to seek all water rights to which an Indian tribe may be entitled in a prior proceeding nevertheless bars the tribe and the United States on its behalf from obtaining those rights in a subsequent litigation. *Nevada*, 463 U.S. at 145; *Arizona II*, 460 U.S. at 621-26. In *Nevada*, this Court found that the United States, on behalf of the Lake Pyramid Paiute Tribe, "was given an opportunity to litigate the Reservation's entire water right." *Id.* at 131. The Court looked at the amended complaint and the consent decree entered in the prior proceeding to determine that the cause of action alleged was nothing "less than a claim for the full implied-reservation-of-water rights that were due the Pyramid Lake Indian Reservation." *Id.* at 133. Thus, even though the United States failed to seek and acquire reserved rights to Pyramid Lake for the Tribe's fishery, claim preclusion barred the Tribe's attempts to gain these rights in later litigation because the United States could have obtained those rights in the prior proceedings.

Similarly, in *Arizona II*, this Court held that the various tribes could not obtain additional water rights from the Colorado River when the United States "omitted" certain reservation lands in an earlier proceeding. Again, the Court precluded these claims for additional water rights for the "omitted" lands because the United States

had the opportunity to obtain those reservations' reserved water rights in the earlier proceeding.[32] *Id.* at 620. . .

In this case, the United States had the opportunity to obtain the Tribe's rights to the tributaries in the *Globe Equity* litigation. Just as the Tribe in *Nevada* was barred from seeking fishery rights to Pyramid Lake and just as the tribes in *Arizona II* were barred from seeking additional irrigation rights for the omitted lands, the Tribe here should be barred from seeking additional rights to the tributaries of the Gila River.

II. AS A GENERAL MATTER THE UNITED STATES COULD NOT SPLIT THE TRIBE'S CLAIMS TO THE TRIBUTARIES

The doctrine of claim preclusion prohibits the splitting of claims except in very limited circumstances.[33] In other words, claim preclusion bars relitigation of all claims that were *or could have been* asserted in the prior action. *Nevada*, at 129-30.

In *Nevada*, the District Court "held that neither the United States nor the Tribe can litigate several different

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[32] The importance of finality of judgment in the water rights context is exemplified by *Arizona II*, because the technical rules of claim preclusion did not apply. This was because the earlier proceeding was in the same original action before this Court. Nevertheless, this Court applied the doctrine of claim preclusion because of the utmost importance that finality of judgments have in water rights litigation in the arid Western United States. *Arizona II*, at 619-20.

[33] The next section addresses that the only potentially applicable exception, allowing parties to preserve certain claims for future litigation by making an express and clear reservation in the consent decree, does not apply here, as the *Globe Equity* parties made no express reservation in the Decree of any claims to the tributaries.

types of water use claims, all arising under the *Winters* doctrine and all designed for the same water source in a piecemeal fashion." 463 U.S. at p. 134 n. 13. As a result, the District Court found that the United States could not split the Tribe's claim to the fishery from the Tribe's claim to the Truckee River. The Ninth Circuit, however, observed the that the United States could have sought to adjudicate the Tribe's irrigation rights separate from the Tribe's fishery rights but it did not in fact split the claim. *Id.* This Court did not resolve whether the claim could have been split because the United States made no attempt to split the claim. *Id.*

This Court has, however, previously ruled that a party may not split its claims and litigate in a piecemeal fashion:

> it was incumbent on the appellant to present in support of his asserted right of attack every available ground of which he had knowledge. He was not at liberty to prosecute that right by piecemeal, as by presenting a part only of the available grounds and reserving others for another suit, if failing in that.

Grubb v. Public Utilities Commission of Ohio, 281 U.S. 470, 478 (1930); *see also Sidney v. Zah*, 718 F.2d 1453, 1458-59 (9th Cir. 1983) (Hopi Tribe barred from seeking removal of a Navajo structure Hopis failed to contest in a prior proceeding by general rule prohibiting the splitting of a cause of action); *Scoggin v. Schrunk*, 522 F.2d 436, 437 (9th Cir. 1975) ("Appellant is not permitted to fragment a single cause of action and to litigate piecemeal the issues which could have been resolved in one action."), *cert. denied*, 423 U.S. 1066 (1976).

In this case, the waters of the tributaries are a part of the waters of the mainstream of the Gila River when they

join the Gila River. As part of its rights under the Decree, the Tribe is entitled to divert and use water that comes from the tributaries. To allow the Tribe to split its claims to the same source of water is to allow piecemeal litigation, and is the antithesis to the concept of finality of judgments – the foundation of the doctrine of claim preclusion.

III. THE ARIZONA SUPREME COURT MISAPPLIED FEDERAL LAW WHEN IT HELD THAT THE UNITED STATES SPLIT THE CLAIMS TO THE TRIBUTARIES

The Arizona Supreme Court's holding that the United States split the claims to the Tributaries misapplied federal law. While there appears to be no case in which this Court has decided what parties are required to do to effectively split a claim by agreement, the various Circuit Courts that have addressed the issue have consistently held that such an agreement to split claims must be set forth in the consent decree and must also be express and clear:

> [C]onsent decrees are of a contractual nature and, as such, their terms may alter the preclusive effects of a judgment. Here however, the Stipulation and the consent judgment are absolutely silent as to the settlement's intended *res judicata* effects. As we noted above, appellant's original complaint sought to establish boundaries for the first suit and to reserve certain of its rights under the Agreement for subsequent litigation. However, those reservations were not carried forward into the contractual settlement with appellee. We are not willing to supply by inference what the parties have failed to expressly

> provide, especially when that inference would suspend the application of this Circuit's principles of *res judicata*.

May v. Parker-Abbott Transfer and Storage, Inc., 899 F.2d 1007, 1010-11 (10th Cir. 1990) (citations omitted) (emphasis added); *see also California v. Randtron*, 284 F.3d 969 (9th Cir. 2002); *International Union of Operating Eng'rs-Employers Constr. Indus. Pension, Welfare and Training Trust Funds v. Karr*, 994 F.2d 1426, 1432-33 (9th Cir. 1993); *United States v. Skokomish Indian Tribe*, 764 F.2d 670, 672-73 (9th Cir. 1985).

The *Randtron* case is particularly instructive because the court faced a situation where one party's claim was expressly split and the other party's was not. *Randtron*, 284 F.3d at 976. Thus, the Court found that one party's claim in a subsequent proceeding was not barred, while the other party's claim was barred. The plaintiff, City of Lodi, asserted that its current claims were split from those adjudged in a prior consent decree. *Id.* at 975. The Ninth Circuit agreed, relying upon express language in the consent decree.[34] *Id.* at 976. The consent decree's release as to Randtron was expressly limited to claims involving only

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[34] The Agreement provided as follows:

> Matters Not Covered by Disclosed Insurance. Any claims or rights (including those asserted in this action) that the Plaintiffs, or either of them, may have now, or may in the future acquire, against Randtron or Oldco Holz to the extent Randtron or Oldco Holz are protected from the liability asserted in those claims by any insurance not exhausted by this Consent Decree (i.e., insurance other than the limits of liability coverage provided by the general liability provisions of the combined single limits endorsements of policy numbers 0624-03-033933 and 0626-00-037304 issued by Employers Insurance of Wausau A Mutual Company).

Id.

certain insurance policies, and the City of Lodi therefore expressly preserved its right to litigate additional claims against Randtron relating to different insurance policies. *Id.*

On the other hand, Randtron failed to secure a similar express reservation with respect to any of its claims. Randtron, therefore, was precluded from asserting its claim for contribution. *Id.* ("Notably, this provision contains no language granting Randtron the same right. Under the terms of the Consent Decree, Randtron was not entitled to seek contribution from Lodi.").

The *Randtron* decision is representative of the law administered by the other Circuits. Where a party expressly reserves its right in the consent decree to litigate a claim in the future, that claim is not precluded in the future by *res judicata*. *See, e.g., Simmons v. New Public School Dist. No. Eight*, 251 F.3d 1210, 1214 (8th Cir. 2001) ("While normally Simmons' EEOC complaint would be barred by the settlement in her first lawsuit, it is clear that the *explicit reservation* of her right to bring her EEOC claims allows this suit.") (emphasis added); *Young-Henderson v. Spartanburg Area Mental Health Center*, 945 F.2d 770, 774 (4th Cir. 1991) (allowing subsequent claims to proceed only because the parties agreed pursuant to the express terms of the consent order "that it would 'only terminate[] the claims raised in the complaint [and that the Consent Order would] not in any way affect any other charges or claims filed by the Plaintiff subsequent to the commencement of this . . . action.'") (changes in the original).

On the other hand, where there is no express reservation of a claim that was or could have been asserted in the prior action, claim preclusion bars the party from raising

the claim in a subsequent action. *See, e.g., Epic Metals Corp. v. H.H. Robertson Co.*, 870 F.2d 1574, 1577 (Fed. Cir. 1989), *cert. denied*, 493 U.S. 855 (1989) (recognizing that "[w]ith respect to a consent judgment," any claim "that is not expressly reserved is barred in future litigation."); *Hadix v. Johnson*, 947 F.Supp. 1100, 1103 (E.D. Mich. 1996), *rev'd on other grounds*, 133 F.3d 940, 943 (6th Cir. 1998) ("[A consent] judgment has the same res judicata effect as a judgment after trial unless there is a reservation of issues discerned from the four corners of the decree.").

Had the United States intended to preserve the Tribe's claims to the tributaries for future action, and avoid the full impact of claim preclusion, it could have done so. Indeed, the United States knew exactly how to split claims because it did so to the Tribe's claims to the Salt River, by clearly limiting the geographic scope of the *Globe Equity* litigation to that portion of the Gila River from ten miles east of the Arizona line to the confluence with the Salt River. In addition, on two occasions in the Amended Complaint, the United States, in describing the rights it was seeking on behalf of the Tribe, clearly and expressly excluded the San Carlos River. If, as the Arizona Supreme Court held, the Amended Complaint did not include any tributaries in the first instance, then the United States had no reason to exclude the San Carlos River in paragraphs 9(b) and 10 of the Amended Complaint. The Amended Complaint fails to include a clear and express statement that the United States was splitting the Tribe's claims to the tributaries.

Instead of splitting the claims to the tributaries, the United States expressly asked the *Globe Equity* court to "determine the rights of the parties hereto to the waters of [*the Gila*] *River and its tributaries*." The Arizona Supreme

Court rationalizes its holding by relying on a phrase later in the paragraph that states "within the area aforesaid." The Arizona Supreme Court held that this means after the tributaries had joined the mainstream of the Gila River. *Gila VI* at 892. On the contrary, the "area aforesaid" clearly referred to the geographic scope of the Gila River to which the United States was seeking to adjudicate water rights: the Gila River from ten miles east of the Arizona line to its confluence with the Salt River. Having made claims to the tributaries in the Amended Complaint, claim preclusion bars relitigation of claims for additional water from the tributaries unless the *Globe Equity* Decree expressly reserved these claims. The Decree includes no express reservation.

On the contrary, several provisions of the Decree make it clear that the tributaries were included. For example, Article XI states "[t]hat the lands within the Gila River watershed for the irrigation of which rights are decreed . . . " By referring to the "*Gila River watershed*," the parties recognized that more than just rights to the mainstream of the Gila River were being settled; these rights included the water from tributaries flowing into the Gila River.[35]

This is further confirmed in Article VIII. A portion of this Article limited the UVDs from consumptively using more than 120,000 acre-feet per year from the Gila River. In setting forth how to calculate consumptive use, the parties expressly added the flows from a tributary:

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[35] This is likewise true in the Gila River Adjudication which defines the cause number W-3 is for the Upper Gila River watershed which includes its tributaries.

> Provided further that the drafts on the stream by the upper valleys defendants shall be limited to a seasonal year diversion which will result in an actual consumptive use from the stream of not to exceed 120,000 acre feet of water; said consumptive use made in any seasonal year shall be determined by adding the recorded flows at a gauging station located in the Gila River at the Red Rock Box Canyon above the heading of the Sunset Canal in New Mexico *and a gauging station located in the San Francisco River immediately above its confluence with the Gila River* and deducting from said sum the recorded flows at a gauging station located on the Southern Pacific Railway bridge crossing the Gila River near Calva, Arizona . . . .

Thus, the parties recognized that the waters of the tributaries flow into the mainstream of the Gila River and contribute part of the water to which they had acquired rights under the Decree. This is true not only for the San Francisco River, but all tributaries to the Gila River. Therefore, the water from each tributary flowing into the Gila River is a part of the water required to satisfy the rights awarded in the Decree. This tributary water is included in the Decreed right.

The last point relied upon by the Arizona Supreme Court was that the dismissal of the defendants claiming rights only on the tributaries shows an intent to split the claims of Tribe. This holding ignores the fact that the United States did not expressly dismiss the Tribe's or any other remaining party's claims to the tributaries. Dismissing certain defendants does not change the impact of claims on the remaining parties to the litigation. *See Randtron*, 284 F.3d 969 (consent decree expressly reversing one party's

claims for the future did not reserve the other party's claims for future litigation – reservation or splitting of claims for each party had to be express). All the dismissal did is preserve the Tribe's and the United States', as well as the other parties', rights to dispute and adjudicate the claims of the dismissed parties, including Phelps Dodge's claims, in the future. Indeed, these water rights claims are now being adjudicated in the Gila River Adjudication. For parties remaining in the litigation, however, the claims to the tributaries were raised by the record, remained at issue, and were conclusively settled in the Decree. Indeed, the Decree expressly states this in the preamble: "that the [p]laintiff and the parties defendants whose claims and rights . . . remain for determination herein, have concluded and settled all issues in this cause. . . ." Likewise, the injunction, Article XIII, enjoins the parties from "asserting or claiming . . . any right, title or interest in or to the waters of the Gila River, or any thereof, except" as provided in the Decree, and restrains and enjoins the parties from "diverting, taking or interfering in any way with the waters of the Gila River or any part thereof . . . ."

The Arizona Supreme Court's holding that the tributaries were split, is contrary to federal law and robs the Decree of finality. Under this holding, much of the rights and protections awarded to the parties under the Decree become illusory. For example, by allowing the Tribe to seek significant reserved water rights to the San Francisco River will emasculate the 120,000 acre-foot limitation in the Decree. If the Tribe succeeds in gaining significant rights to the San Francisco River, it could divert upstream from the point of measurement set out in the Decree thereby depriving the UVDs of the water they would otherwise use to calculate the consumptive use limit.

Similarly, SCIP's 1924 right to store water in the San Carlos Reservoir would only apply to the mainstream of the Gila, not the tributaries. In other words, under the Arizona Supreme Court's holding, SCIP was awarded no interest in the waters of the tributaries of the Gila River. This would upset the balance struck in the Decree not only for SCIP, but for the UVDs as well who were given apportionment rights in the Decree.[36]

The fact the Amended Complaint included express references to the tributaries, coupled with the Decree's recognition that it finally considered and settled all issues, that the decreed rights were for the "Gila River watershed," and that waters from the San Francisco River would be included in determining the consumptive use limit, establishes that the Tribe's rights to waters from the tributaries were included in the Decree. This is not the type of express reservation of claims required to split claims under federal law. Accordingly, the Tribe's right to water from the tributaries was included in the Decree, and the Tribe and the United States are precluded from seeking additional water from the tributaries in the Gila River Adjudication.

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[36] Apportionment rights are described in Article VIII of the Decree. In brief, apportionment allows the UVDs to divert water in disregard of the United States' prior rights based on the amount of stored water in the San Carlos Reservoir.

CONCLUSION

Over 70 years ago, the United States District Court for the District of Arizona entered the *Globe Equity* Decree that adjudicated to the United States on behalf of the Tribe 6,000 acre-feet per year of Gila River water, with an 1846 priority date, for use on the Reservation. The *Globe Equity* Decree resolved all claims of the United States, as trustee for the Tribe, to water from the "Gila River and its tributaries" and enjoined the parties to the Decree from asserting rights to the Gila River beyond those specified in the Decree. During the intervening years, all appropriators of water from the Gila River system have relied on the finality of the *Globe Equity* Decree. In fact, much of Central and Eastern Arizona has developed in reliance on the rights set forth in the Decree.

Now over 70 years later, notwithstanding the fact the Amended Complaint sought to adjudicate the rights of the Tribe to the Gila "River and its tributaries," and the clear prohibition in the Decree precluding parties to it from seeking additional rights to the water of the "Gila River, or any thereof," the Arizona Supreme Court has allowed the Tribe and United States on its behalf, to assert sizeable additional claims to the tributaries of the Gila River in the Gila Adjudication. Allowing these claims in the Gila Adjudication defeats the principle of finality of judicial determinations, disrupts the economy of much of Arizona, deprives those who have relied upon the Decree of their investment-backed expectations and vested rights, and conflicts with this Court's decisions in *Nevada* and *Arizona II*.

As set forth by this Court in *Nevada* and *Arizona II*, the doctrine of *res judicata* precludes the Tribe and the United States on its behalf from obtaining any additional

rights to water from the tributaries of the Gila River beyond those provided in the *Globe Equity* Decree. Accordingly, the decision of the Arizona Supreme Court should be reversed so as to preclude the Tribe and the United States from seeking additional water from the tributaries.

Respectfully submitted,

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APPENDIX

APPENDIX 1

IN THE DISTRICT COURT OF THE UNITED STATES
IN AND FOR THE DISTRICT OF ARIZONA

Globe – Equity No. 59

THE UNITED STATES OF AMERICA,

Plaintiff,

-v-

Gila Valley Irrigation District; Arizona Copper Company; Arizona Hercules Copper Company; Aztec Mutual Canal Company; A.T. Lee & Company; Billingsley Canal Company; Billingsley Extension Canal Company; Black & McCluskey Canal Company; Boquillas Land & Cattle Company; Brown Canal Company; Burtcher Ditch Company; Central Canal Company; Colmenero Canal Company; Colvin-Jones Canal Company; Colvin-Jones Consolidated Ditch Company; Consolidated Canal Company; Cosper Wilson Canal Company; Cosper-Windham Canal Company; Cosper and Windham Extension Canal Company; Curtis Canal Company; Curtisville Irrigation & Canal Company; Dodge Canal Company; Double Circle Cattle Company; [Illegible] Canal Company; Enterprise Canal Company; First National Bank of El Paso, Texas; Florence-Casa Grande Water Users Association; Fourness Canal Company; Fournirs Canal Company; Franklin Canal Company; Frisco Placer Mining Company; Ft. Thomas Land & Cattle Company; Todd Bullion Mining Company; Gonzales & Company Irrigating Canal; Graham Canal Company; Hankins & Sims Milling & Irrigating Company; Hughes Irrigating Company; Jones-Colvin Canal Company; Liberty Water Company; London Gila Mining Company; Maxey Ditch Company; Military Canal

Company; Moddle Canal Company; [Illegible] Company; Montazuma Consolidated Canal Company; [Illegible]; Nichols & Company; Ray Consolidated [Illegible] Ditch Company; San Jose Canal Company; San Pedro Water Users Association; Sexton Ditch Company; Shriver Ditch Company; Smithville Canal Company; Smithville Extension Canal Company; Sunset Canal Company; Sunset Irrigating Canal Company; Tidwall Canal Company; Union Canal Company; Valley Canal Company; Warel & Courtney Dam Company; White Mountain Lumber Company; York Canal Company, York Cattle Company; respectively corporations; John Doe-Abbott; Chas Adams; Kate L. Adams; W.M. Adams; J.L. Aker; E. Alberts; John Doe Alquire; Millford Alrud; P.C. Alsdorf; John Doe Alvidrus; Joseph J. Anderson; R.H. Angle; John Doe Aury; John Doe Bacy; Henry G. Ballou; Wilson H. Bates; J.R. Beaver; J.R. Beavers; Paul Becker; A.H. Bennett; J.W. Bentz; Florentino Billabe; B.F. Billingsley; C.O. Billingsley; John J. Birdno; John J. Birelno; B.A. Boyles; Brugh H. Boyles; Newton Bradley; Jackson Branaman; Robert Branaman; J.B. Brooks; C.M. Brooks; R.W. Brooks; J.H. Brown; Sam Brown; S.A. Brown; E.P. Bryce; Josephine Burks; J.C. Burlison; Juan Cachon; John Doe Cacias; S.S. Campball; Rachel Carr; John Doe Carriger; J.A. Carter; John Castro; W.L. Cauthen; Chono Celaya; F.A. Chamberlain; John Christy; Simon Cisneros; John Doe Clifton; G.H. Collinwood; John Doe Colton; John Doe Courtney; J.F. Crank; Ben M. Crawford; M.C. Crawford; John Doe Cullen; Armon Curtis; D.G. Davidson; W.J. Davis; John Doe Day; Jesus de Si; Thos Desmond; John Doe Dinsmore; Frank C. Dolley; J.H. Dorsey; S.R. Dunnagan; W.B. Eckles; J. Elden; Joseph C. Ellidge, W.R. Elliot; W.F. English; J. Espinosa; W.R. Estrada; John Evans; George Finch; Arthur A. Fisher; W.F. Foster; Alma Fudickson; Anna M.

Gale; C.E. Gillett; J.M. Gilleland; Louis Gilson; Emil Gerard; J.H.B. Glasspie; Jose Gonzales; H.S. Grady; W.C. Green; John Doe Griswold, F.C. Grossback, Chas J. Gross, John Doe Grunler; John Hagen; L.W. Halladay; Henry B. Harris; M.F. Harris; Wade Harris; F.A. Harvey; J.D. Hartzler; G. Len Hatch; C.C. Hayes; G.E. Head; J.L. Henderson, A.S. Henry; James Henshall; G.L. Herring, C.C. Hester, Francelle Haywood, Erma T. Higgins; Jacob Hildebaugh; R.W. Hill; J.I. Hinkle; J.P. Hinkle, T. Hinton, Albert Hock; John Doe Holliday; F.G. Hopkins; R.T. Horrell, C.F. Houhflan; Free Hubbard; N. Hughes; Lettie F. Hunt; John Doe Hyde; A. Ingalls; William Jackson; Anna Jacobson; Jesse W. Jacobson; J.F. James; Julius W. Jamieson; J.W. Jamison; Jensen Brothers; Rachel Jenson; A.F. Johns; R.T. Johns; D. Johnson; F. Vernon Jones; F.W. Jones; John B. Jones; L.A. Jones; Mary Jane Jones; Perley P. Jones; Willard L. Jones; William L. Kaneaster; A.E. Kealer; William L. Keppler; W.R. Ketchum; George F. Kilmet; H.D. Kipper; J.G. Kipper; [Illegible] Doe Lacey; John Laffey, A.A. Larona; [Illegible] Lassater; A. Lattin; [Illegible] Law; A.L. Layton; Mrs. A.L. Layton; A.T. Layton; M.M. Layton; John Doe Lehoxi; W.A. Leonard; John Doe Lightfoot; Henry Lines; W.S. Logan; Christ Loss; Theodore Lujan; Anna H. Lunt; B. Lunt; Ed Lunt; George Lunt; Eaton Lunt; Owen Lunt; Randall Lunt; R.H. Lunt; Vernon Lunt; I.J. McCormick; J.W. McCormick; R.C. McClaron; D.T. McGuire; Robert McIntyre; Hugh McKeen; Gordon McLean; R.B. Maley; John Mansfield; T.J. Markham; J.A. Martin; Peter Martin; R.H. Martin; John Doe Mason; John Doe Mathers; Katherine S. Mellon; W.H. Mellor; John Doe Menos; Chas Merrill; Fannie Merrill; Fanley P. Merrill; Orson Merrill; P.M. Michelena; Manrico Mijia; M. Miller; William Milligan; J.B. Minton; James A.

Mitchell, Z.C. Montgomery; Robert Montgomery; S.S. Moore; John Doe Moorman; John Doe Mormin; John Doe Morrill; Alfred Mortenson; Arvin Mortensen; Hans Mortensen; Hiram Mortensen; Joseph Mortensen; Peter Mortensen; V. Nard; John Nash; John Doe Newton; John Doe Nicholas; John Nisson; Alice E. Nixon; Budd Nunn; D.S. O'Brien; Geo P. Olmstead; Geo A. Olney; Jose Ortega; Nancy O. Pace; Lee Patrick; A.D. Payne; E. Payne; George O. Payne; H.N. Payne; Junius Payne; L. Payne; Leila N. Payne; [Illegible] Peria; Z.C. Pina; Jas A. Pirkens; J.A. Pitt; Tomas Ponce; C.G. Powell; S.W. Price; N.Y. Prier; Dell M. Potter; C. Purttle; John Doe Putman; C.D. Putnam; Chas Putnam; Frederick M. Putnam; J.A. Reavis; James Adison; Ashley Reavis; James Addison; Piralto Reavis; John Reid; Chas T. Reynolds; John Doe Rich; L.H. Richards; C.E. Richardson; Ralph Richardson; J.H. Roach; H.P. Rogers; J.K. Rogers; J.R. Rogers; J.E. Rollins; A.H. Rose; Bert Z. Rose; S.F. Rose; John Doe Roseberry, John Doe Roskune; F. E. Ross; Victorino Ruiz; Frederica Saiviz; Jose Sanchez; Lillian Sander; Luis Santos; John Doe Schetler; C.F. Schilling; H.T. Schmidt; S. Schultz; George Scott; Manuel Serano; R. Sexton; Ernest G. Shade; C.W. Shannon; R.P. Sharp; C.M. Short; Louisa Short; John Shrivers; George Sigler; Henry L. Smith; A.R. Snyder; John Doe Solomon; Luinelas Somehez; Wm. Sparks, Wm. H. Stapley; Albert Steinfield; S. Stewart; T.L. Stockton Norberto Subia; John Doe Summers; H.B. Sweeting; L.F. Sweeting; A.E. Swofford; O.F. Swofford; William Telfar; Candido Telles; Cinaco Telles; F.A Thackerey; George Thompson; J.M. Thompson; Manuel Tibbets; P. Tibbets; John Doe Turney; W.N. Tweed; Jose Uribe; Elijah Urtiaga; John Doe Vaca; Charles H. Vann; John H. Van Order; Louis Voelckel; Peter Wahlin; J.E. Walker; Edgar Wallace; S.H. Ward; I.F. Wardner; J.F. Wardner; C.A. Warner;

Albert Warren; J.P. Welles; George W. Wells, Lorenzo Werch; William Whelin; Peter Whelin; D.Y. Whipple; Harry C. White; Wm. R. Whitehead; Andrew Williams; Geo. W. Williams; John Doe Wilkins; T.M. Williamson; Maurice Wills; A.T. Wilson; J.B. Windham; Frederick Winkleman; Pete Winkleman; L.H. Woolsey; M.B. Woolsey; John Doe York; R.J. Young; Richard Roe, administrator of the estate of Geo Casper; Richard Roe Second Administrator of the estate of Mrs. J.M. Marsh; Richard Roe Third administrator of the Estate of Cosper Gale

Defendants,

BILL OF COMPLAINT

(Filed Dec. 5 1927)

Comes now the United States of America and files this its Bill of Complaint against the above named defendants, answers under oath being hereby expressly waived and for its cause of actions states:

1. That this suit is prosecuted at the request of the Secretary of the Interior and by direction of the Attorney General of the United States.

2. That the defendant Gila Valley Irrigation District is an irrigation district organized and existing under the laws of Arizona, having its principal place of business in Graham County in the District of Arizona; that certain others of the above named defendants to-wit: Arizona Copper Company, Brown Canal Company, Central Canal Company, Colvin-Jones Canal Company, Colvin-Jones Consolidated Ditch Company, Consolidated Canal Company, Curtis Canal Company, Curtisville Irrigation & Canal Company, Dodge Canal Company, Double Circle

Cattle Company, Enterprise Canal Company, Fourness Canal Company, Fournire Canal Company, Ft. Thomas Land & Cattle Company, Graham Canal Company, Hawkins & Sims Milling & Irrigating Company, Jones-Colvin Canal Company, Maxey Ditch Company, Military Canal Company; Montezuma Consolidated Canal Company, Sanchez Ditch Company, San Jose Canal Company, Smithville Canal Company, Smithville Extension Canal Company, Tidwell Canal Company, Union Canal Company, Warel & Courtney Dam Company are corporations doing business in Graham County in the District of Arizona; that certain others of said defendants to-wit: Billingsley Canal Company, Billingsley Extension Canal Company, Black & McCluskey Canal Company, Burtcher Ditch Company, Colmenero Canal Company, Cosper Wilson Canal Company, Cosper-Windham Canal Company, Cosper & Windham Extension Canal Company, Duncan Canal Company, Frisco Placer Mining Company, Gold Bullion Mining Company, Liberty Water Company, Moddle Canal Company, Model Canal Company, Moranci Water Company, Sexton Ditch Company, Shriver Ditch Company, Sunset Canal Company, Sunset Irrigating Canal Company, Valley Canal Company, White Mountain Lumber Company, York Canal Company and York Cattle Company, are Corporations doing business in Greenley County in said District of Arizona; that defendant First National Bank of El Paso Texas, is a corporation organized and existing under the laws of the United States, having its principal place of business at El Paso, Texas; that certain others of said defendants to-wit: Arizona Hercules Copper Company, Aztec Mutual Canal Company, A.T. Lee & Company, Boquillas Land & Cattle Company, Florence-Casa Grande Water Users Association, Grozalos & Company

Irrigating Canal, London Gil[illegible] Mining Company, Ray Consolidated Copper Company, San Pedro Water Users Association are corporations and associations authorized under the laws of Arizona to do business in the District of Arizona having their principal places of business in the District of Arizona [Illegible] certain others of said defendants, to-wit: Nichols & Company, Franklin Canal Company, Hughes Irrigating Canal, Cosper Windham Canal Company, Sunset Canal Company and Valley Canal Company are corporations doing business in the District of New Mexico, County of Hidalgo that certain others of said defendants, to-wit: [Illegible], R.W. Hill, W.L. Cauthen, J.B. Windham, S.R. Dunnagan, J.D. Hartzler, J.A. Martin, Candido Telles, N. Hughes, S. Stewart, Joseph C. Elledge, William L. Kaneaster, are residents of Hidalgo County in the District of New Mexico; that saving and excepting those above named, all and every of the defendants herein, as plaintiff is informed and believes and therefore alleges are citizens and residents of the State and District of Arizona;

3. (a) That the plaintiff is the owner of certain lands in the Counties of Pinal and Maricopa, in the District of Arizona, said lands being the same as those included within the boundaries of the Gila River Indian Reservation, situate and located in the following townships South and East of the Gila and Salt River Base and Meridian as follows, to-wit:

> Township 1 South, Ranges 1 and 2 East; Township 2 South Ranges 1,2,3 and 4 East; Township 3 South Ranges 2,3,4,5 and 6 East; Township 4 South Ranges 2,3,4,5,6,7 and 8 East; Township 5 South Ranges 4, 5, 6, 7 and 8 East

and comprising approximately 371,422 acres of land which is the home and abiding place of certain Indians to the number of 5,000 more or less, wards of the plaintiff, and to whom the plaintiff has under Act of Congress of February 8, 1887, (24 Stat. 388) and amendment by Section 17 Act of June 25, 1910 (36 Stat. 855) duly allotted such areas of said lands as in the opinion of the Secretary of the Interior have been for the best interest of said Indians, aggregating 49,896 acres, more or less, said Indians being chiefly of the Pima tribe of Indians; that pursuant to Act of Congress dated February 28, 1859 (11 Stat. 401) and in the year, to-wit: 1859, the said lands to the extent of 64,000 acres were withdrawn and set apart as the Gila River Indian Reservation by Proclamation of the President of the United States and the balance of said lands were so withdrawn and reserved by further Proclamation of the President of the United States dated, to-wit: August 31, 1876, January 10, 1879, June 14, 1879, May 5, 1882, November 15, 1883, May 8, 1911, July 31, 1911, December 16, 1911, June 2, 1913, August 27, 1914, March 18, 1915, and July 19, 1915; that the said lands comprising the said Gila River Indian Reservation are now and at all times since the said 28th day of February, 1859, and for a long period of time prior thereto have been well fitted and adapted for uses of agriculture and grazing and are and may be advantageously utilized for such purposes, for which purposes the said Pima Indians appropriated from the waters of the Gila River flowing through the said Reservation such amount of water as was necessary for the economical and successful irrigation and cultivation of said lands; that the said Pima Indians would have utilized the entire flow of said Gila River for the economical and successful cultivation of their lands if they had not been interfered with, in this regard, by certain of the defendants, taking from the

upper reaches of the Gila River and its tributaries that water to which said Indians were entitled.

3. (b) That the plaintiff is the owner of certain lands in the counties of Gila and Graham, in the District of Arizona, said lands being the same as those included within the boundaries of the White Mountain or San Carlos Indian Reservation, situate and located in Townships 1 to 6 North, and 1 to 4 South, ranges 15 to 27 West inclusive, of the Gila and Salt River Base and Meridian, and comprising many thousand acres of land which is the home and abiding place of certain Indians to the number of 2500, more or less, wards of the plaintiff, said Indians being chiefly of the Apache tribe of Indians; that pursuant to Acts of Congress dated March 3, 1853 (10 Stat. 238), February 20, 1893 (27 Stat. 469), June 10, 1896 (29 Stat. 358), June 7, 1897, (30 Stat. 64), March 2, 1901 (31 Stat. 952), and during and after the year, to-wit: 1871, the said lands were withdrawn and set apart as the White Mountain or San Carlos Indian Reservation by Proclamations of the President of the United States dated the 9th day of November, 1871, the 14th day of December, 1872 the 5th day of August 1873, the 21st day of July 1874 the 27th day of April, 1876, the 30th day of October 1876, the 26th day of January, 1877, the 31st day of March, 1877, and the 22nd day of December, 1902; that the said lands comprising the said White Mountain or San Carlos Indian Reservation, are in part, and to-wit: to the extent of 3,000 acres more or less, now and at all times since the said 9th day of November, 1871, and for a long period of time prior thereto, have been well fitted and adapted for the uses of agriculture and grazing and are and may be advantageously utilized for such purposes, for which purposes the said Apache Indians appropriated from the waters of the

Gila River and its tributary, to-wit: the San Carlos River flowing through said reservation such amount of water as was necessary for the economical and successful irrigation and cultivation of said lands; that the said Apache Indians would have utilized more flow of the said Gila River and its tributary for the economical successful cultivation of their lands if they had not been interfered with, in this regard, by certain of the defendants, taking from the upper reaches of the Gila River and its tributary the water to which the said Indians were entitled.

3. (c) That the said Indians heretofore mentioned are agriculturalists and at the advent of the white man to the Valley of the Gila River in the early part of the sixteenth century were cultivating their rancherias and irrigating farms situated in this Valley and had been so cultivating the same for centuries prior thereto, irrigating and cultivating their lands to the extent of some 25,000 acres, and that this occupying and cultivating of their lands through irrigation methods by appropriating and using the waters of the Gila River and its tributaries had been effective many years prior to the use by any white settlers of such waters, thereby giving the said Indians the first right to the use of said waters by reason of prior appropriation and beneficial use thereof; that in enacting said Acts The Congress considered and acted upon the necessity of reserving water rights of the said Indians as well as the land which these Indians had been occupying and using long prior to the passage of said Acts; that thereafter and upon enacting the said Act of February 8, 1887, the Congress considered and acted upon the same necessity and effectively reserved the water right of the said land, by providing for the allotting of the land in severalty to the Indians entitled thereto and the Secretary of the

Interior on or about the 17th of October, 1913, approved instruction to the allotting agent in providing for the allotment of irrigable lands under said Act as amended by Section 17 of the Act of June 26, 1910, (36 Stat. 855-859).

3. (d) That thereafter and in the year 1920, the plaintiff, upon behalf of said Indians, entered into agreements with the white owners of lands in the Florence and Casa Grande Valleys, and provided for the formation of the Florence-Casa Grande project, whereby it was agreed by said white owners that the Indians of the Gila River Reservation are entitled to sufficient water to irrigate not less than 40,000 acres of land of the said Indians upon the said Reservation; that as part of the same agreements any and all appropriations of water of the Gila River and its tributaries heretofore made by the white owners of lands within the said Florence-Casa Grande Project together with all water ways, ditches and water works of every kind and description are for the use and benefit of the plaintiff including to-wit: 40,000 miner's inches of water appropriated by the Florence Canal Company, a corporation, on April 4, 1888, filed and recorded April 4, 1888 in Book 3 Miscellaneous Records, page 540 in the office of the County Recorder of said Pinal County, also all that water appropriated May 21, 1910, by the Florence Casa Grande Water Users Association together with dam and water works; appropriation filed and recorded May 24, 1910 in Book 13 Miscellaneous Records, page 6 of said Pinal County; also all the water appropriated December 29, 1910, by Florence-Casa Grande Water Users Association, together with dam and water works, appropriate filed and recorded January 3, 1911, in book 13 Miscellaneous Records, page 86 of said Pinal County; also all that water appropriated June 3, 1911, by Casa Grande Valley Water

Users Association, together with dam and water works, appropriation filed and recorded June 12, 1911, in book 13 of Miscellaneous Records, pages 267 et seq. of said Pinal County; also all that water appropriated March 28, 1912, by Casa Grande Valley Water Users Association, together with dam and water works, appropriation filed and recorded March 29, 1912, in Book 13 of Miscellaneous Records, pages 521 et seq. of said Pinal County; also all that water appropriated March 28, 1912, by Casa Grande Valley Water Users Association, together with dam and water works, appropriation filed and recorded March 29, 1912, in book 13 of Miscellaneous Records, pages 523 et seq. of said Pinal County; also all that water appropriated August 30, 1913, by Case Grande Valley Water Users Association, together with dam and water works, appropriation filed and recorded September 4, 1913 in book 14 of Miscellaneous Records, pages 369 et seq. of said Pinal County; also all that water appropriated August 30, 1913, by Casa Grande Valley Water Users Association, together with dam and water works, appropriation filed and recorded August 4, 1913, in Book 14 of Miscellaneous Records, pages 370 et seq. of said Pinal County; also all that water appropriated August 30, 1913; by Casa Grande Valley Water Users Association, together with dam and water works, appropriation filed and recorded September 4, 1913; in book 14 of Miscellaneous Records, pages 371 et seq. of said Pinal County; also all that water appropriated August 30, 1913, by Casa Grande Valley Water Users Association, together with dam and water works, appropriation filed and recorded September 4, 1913, in book 14 of Miscellaneous Records, pages 372 et seq. of said Pinal County; also all that water appropriated September 19, 1913 by Casa Grande Valley Water Users Association,

together with dam and water works, appropriation filed and recorded October 14, 1913 in Book 14 of Miscellaneous Records, pages 3865 et seq. of said Pinal County; also all that water appropriated September 19, 1913 by Casa Grande Valley Water Users Association, together with dam and water works, appropriation filed and recorded October 14, 1913; in Book 14 of Miscellaneous Records, pages 387 et seq. of said Pinal County; also all that water appropriated September 19, 1913 by Casa Grande Valley Water Users Association, together with dam and water works, appropriation filed and recorded October 14, 1913 in Book 14 of Miscellaneous Records, pages 386 et seq. of said Pinal County; also all that water appropriated September 19, 1913, by Casa Grande Valley Water Users Association, together with dam and water works, appropriation filed and recorded October 14, 1913, in Book 14 of Miscellaneous Records, pages 387 et seq. of said Pinal County; also all that water appropriated September 19, 1913, in book 14 of Miscellaneous Records, pages 388 et seq. of said Pinal County; also all that water appropriated September 19, 1913, by Casa Grande Valley Water Users Association, together with dam and water works, appropriation filed and recorded October 14, 1913 in Book 14 of Miscellaneous Records, pages 389 et seq. of said Pinal County; also all that water appropriated September 19, 1913, by Casa Grande Valley Water Users Association, together with dam and water works, appropriation filed and recorded October 14, 1913 in Book 14 of Miscellaneous Records, pages 390 et seq. of said Pinal County; also all that water appropriated September 19, 1913, by Casa Grande Valley Water Users Association, together with dam and water works, appropriation filed and recorded October 14, 1913 in Book 14 of Miscellaneous Records, pages 391 et seq. of said Pinal County; also all that water

appropriated May 21, 1910, by Florence-Casa Grande Valley Water User's Association, together with dam and water works, appropriation filed and recorded May 27, 1910 in Book 3 of Miscellaneous Records, pages 127 et seq. of Gila County; also all that water appropriated December 29, 1910, by Florence-Casa Grande Valley Water User's Association, together with dam and water works, appropriation filed and recorded January 9, 1911 in Book 3 of Miscellaneous Records, pages 184 et seq. of Gila County; also all that water appropriated June 3, 1911, by Casa Grande Valley Water Users' Association, together with dam and water works, appropriation filed and recorded June 10, 1911 in Book 3 of Miscellaneous Records, pages 227 et seq. of Gila County.

3. (e) That the plaintiff, by its duly authorized agent James B. Alexander heretofore and on the 28th day of February, 1911, duly appropriated for and on behalf of certain Pima and Papago Indians, wards of the United States for the use of said Indians for irrigation, domestic use, stock and any other beneficial purpose on their lands on the said Gila River Reservation 20,000 inches, miner's measurement of the flood water flow of the water flowing in the Gila River at a point on the Gila River at the intersection of that certain canal known as the Little Gila River with the Gila River in Section 4 Township 5 South, Range 7 East of the Gila and Salt River Base and Meridian, said appropriation of water being an addition to all water theretofore appropriated for the use of said Pima and Papago Indians and theretofore used by them, and for the purpose of irrigating unsurveyed lands within the said Gila River Indian Reservation, plaintiff giving notice of intention to build and maintain a dam in the said Gila River at the aforesaid intersection and to clean out and

widen the aforesaid Little Gila River and to use the aforesaid Little Gila River and a main canal to conduct the water appropriated upon the lands of the Indians in said Gila River Reservation, also notice of intention to construct and maintain other canals headed on the Little Gila River as aforesaid at points wherever feasible, to irrigate the said Indian lands; said notice of appropriation being filed and recorded in the office of the County Recorder of said Pinal County, April 4, 1911, in Book 14 of Miscellaneous Records at pages 200 et seq; that the plaintiff by its duly authorized agent James B. Alexander heretofore and on the 28th day of February, 1911, for and on behalf of said Pima and Papago Indians, wards of the plaintiff, resident on the South side of the Gila River in said Gila River Indian Reservation duly appropriated for said Indians, for irrigation domestic use, stock and other beneficial purposes on their lands on the said Reservation 3,000 inches miner's measurement, of the flood water flow of the water flowing in the Gila River and at a point on the Gila River in Section 12 Township 5 South, Range 8 East of the Gila and Salt River Base and Meridian, approximately in the Southwest quarter of said Section 12 and about one-eighth of a mile of the South line of said quarter section, said appropriation water being in addition to all water theretofore appropriated for the use of said Indians and plaintiff also gave notice of intention to enlarge, build and maintain a dam in the said Gila River at the said point in Section 12 and to divert water thereof and to enlarge, construct and maintain a canal from said point of diversion to the lands of the said Gila River Reservation, the said proposed enlarged canal to follow a canal constructed by the said Indians in the year 1882 and through which the said Indians have conducted each year since 1882 from 300 to 1,000 miner's inches of the normal flow

and flood water of the Gila River for irrigation of their farming lands above described except when prevented as hereinafter set forth, said appropriation being filed and recorded April 4, 1911, in the office of the County Recorder of said Pinal County in Book No. 13 Miscellaneous Records pages 202 et seq; that the plaintiff by its duly authorized agent James B. Alexander heretofore and on the 28th day of February, 1911, for and on behalf of said Indians, wards of the United States, duly appropriated for the use of said Indians for irrigation, domestic use, stock and for other beneficial purposes on their lands on said reservation 3,000 miner's inches of the Flood water flow of the water flowing in the Gila River at a point on the Gila River in Section 12, Township 5 S, Range 8 East of the Gila and Salt River Base and Meridian, approximately in the Northwest quarter of said section and about one-quarter of one mile south of the North line of said quarter section, this appropriation being an addition to all water heretofore appropriated for the use of the said Indian [Illegible] the plaintiff also gave notice of intention to enlarge, build and maintain a dam in the said Gila River at the said point of diversion together with notice of intention to enlarge, construct and maintain a canal from said point of diversion to said lands on the Gila River Reservation, the said proposed, enlarged canal to follow a canal constructed by the said Indians in the year 1868 through which the said Indians have conducted each year since the year 1868 1,000 miner's inches of the normal flow and the flood waters of the Gila River for the irrigation of their farming lands except when prevented as hereinafter set forth, said appropriation being filed and recorded on April 4, 1911, in the office of the County Recorder of said Pinal County in Book 13 of Miscellaneous Records at page 203; that the plaintiff by its duly authorized agent James B. Alexander

heretofore and on the 16th day of February, 1911, for and on behalf of said Indians, appropriated for said Indians for irrigation, domestic use, stock and for any other beneficial purpose on their lands on said Gila River reservation 15,000 inches, miner's measurement, of the flood water flow of the water flowing in the Gila River at a point on the Gila River in the Northwest quarter of Section 12 Township 4 South, Range 6 East of the Gila and Salt River Base and Meridian, approximately in the center of the North line of said quarter section where a canal and head gates have been constructed to divert the flood water therein appropriated for the use of said Indians and for the purpose of irrigating unsurveyed lands within said Gila River Indian Reservation, and plaintiff thereby gave notice of intention to build and maintain a diversion dam in the Gila River at the said point and that it had constructed a canal from said point to the lands of the said Indians [Illegible] said Gila River Indian Reservation for the purpose of constructing 15,000 miner's inches of flood water of the Gila River for irrigation of the farming lands above described, the said appropriation being in addition to any water theretofore appropriated for the said Indians, which notice of appropriation was [Illegible] [Illegible] April 4, 1911, in the office of the County Recorder of Pinal County in Book 13 Miscellaneous Records, page 205 et seq; that the plaintiff by its duly authorized agent Graves Moore, acting by the direction of the Secretary of the Interior heretofore and on the 16th day of May, 1912, duly located claimed and appropriated water of the Gila River and its tributaries, torrential or otherwise, flowing in the channel of the Gila River to the extent of 150,000 acre feet, for the purpose of irrigation and domestic use of lands reserved for Indians in Pinal and Maricopa Counties, Arizona, giving Notice of intention to construct and maintain a

dam across the Gila River for the diversion of said quantity of water at or near a point within the Gila River Indian Reservation in Township 4 South, Range 7 East of the Gila and Salt River Pass and Meridian, known as the Santan Canal Heading or some other suitable point East thereof, also giving notice of intention to construct and maintain a canal on the North side of the Gila River and a similar canal on the South side of the Gila River commencing at points in the vicinity of the diversion dam to be thereafter constructed across said river and continuing up to its respective terminus at the extreme West end of the Gila River Indian Reservation, for conveying water to said lands, expressly reserving the right to change the point of diversion, this application being no waiver of any property interests or right theretofore reserved held or claimed by this plaintiff for Indians under any Act of Congress or Executive Order or under filings, locations, notices, appropriations or claims theretofore made, posted, recorded or acquired by purchase or conveyance by or to the United States or its Indian wards, which notice of appropriation was filed and recorded in the office of the County Recorder of said Pinal County, May 17, 1912, in Book 13 of Miscellaneous Records, pages 570 et seq; plaintiff by its duly authorized agent Graves Moore acting by the direction of the Secretary of the Interior heretofore and on the 6th day of June, 1912, duly located, claimed and appropriated [illegible] [illegible]the Gila River and its tributary, torrential or otherwise flowing in the channel of the Gila River to the extent of 150,000 acre feet, for the purpose of irrigation and domestic use on lands reserved for Indians in Pinal and Maricopa Counties, said 150,000 acre feet to include that part of the normal or low water flow of the Gila River which the said Indian lands were then entitled to

receive for their irrigation by right of prior appropriation and use, giving notice of intention to construct and maintain a dam across the Gila River for the diversion of said quantity of water at a point within the Gila River Indian Reservation in Township 4 South, Range 7 East of the Gila and Salt River Base and Meridian, known as the Santan Canal Heading or at some other suitable point, plaintiff also giving Notice of intention to construct and maintain a canal on the North side of the Gila and a similar canal on the South side of the Gila River commencing at a point in the vicinity of a diversion dam thereafter to be constructed across said River and continuing each to its respective terminus at the extreme West and of the Gila River Indian Reservation and reserving the right to change the point of diversion, the plaintiff not waiving any property interest or right theretofore reserved, held or claimed by the United States for Indians under any Act of Congress, Executive Order or filings, notices, [Illegible] locations, appropriation or claims theretofore made, posted, [Illegible] recorded or acquired by purchase or conveyance by or to plaintiff or its ward, which notice of appropriation was filed and recorded on June 8, 1912, in the office of the County Recorder of said [Illegible] Pinal County in book 13 Miscellaneous Records at pages 583 et seq.; that plaintiff by its duly authorized agent French Gilman acting by direction of the Secretary of the Interior heretofore and on the 2nd day of September, 1912, duly located, claimed and appropriated water of the Gila River and its tributaries torrential or otherwise flowing in the channel of the Gila River to the extent of 150,000 acre feet per annum for the purpose of irrigation and domestic use on lands reserved for Indians in Pinal and Maricopa Counties, said 150,000 acre feet to include that part of the normal or low water flow of the Gila River which said Indian lands were then

entitled to receive for their irrigation by right of prior appropriation and use, plaintiff also thereby giving notice of intention to construct and maintain a dam across the Gila River for the divers of said quantity of water at or near a point within the Gila River [Illegible] Reservation in Township 4 South, Range 7 East of the Gila and Salt [Illegible] River Base East and Meridian, known as the San Tan canal heading or other suitable use plaintiff also giving notice of intention to construct and maintain a canal on the North side of the Gila River and a similar canal on the South side of the Gila River, each commencing at a point in the vicinity of diversion dams to be constructed across said River and continuing each to its respective terminus at the extreme Western [Illegible] of the Gila River Indian Reservation, for conveying water to the said Indian lands, and reserving the right to change the point of diversion, by which notice the plaintiff did not waive any property interests or rights theretofore reserved, held or claimed by the United States for Indians under any Act of Congress or Executive Order or under filings, notices, locations, appropriations or claims, heretofore made, posted, recorded or acquired by purchase or conveyance by the United States or its Indian wards, which notice of appropriation was duly filed and recorded in the office of the County Recorder of Pinal County on September 3, 1912, in Book 14 of Miscellaneous Records at pages 52 et seq.; that the plaintiff by its duly authorized agent R.A. Ward, acting under the direction of Secretary of the Interior on the 22nd day of May, 1916, duly [Illegible], [Illegible] and appropriated the waters of the Gila River to the extent of 2,000 cubic feet of water per second for the purpose of irrigating lands in the Gila River Indian Reservation and public and private lands in Pinal County and for domestic and other beneficial uses thereon, plaintiff giving

notice of [Illegible] to construct and maintain a dam across the Gila River for the diversion of said water at a point in the Northwest quarter of Section 8 Township 4 South, Range 11 East and near the center of said section plaintiff also giving notice of the intention to construct and maintain a canal for the carriage of said water to the said lands commencing at the said point of diversion and running Southeasterly to the so-called Little Gila River, a part of the system of canal and ditches then existing and being operated on said reservation together with notice of intention to construct or otherwise provide said canal with branch and lateral canals and ditches sufficient to supply all the lands of said Gila River Indian Reservation, plaintiff thereby reserving, locating, claiming and appropriating, in addition to the waters so appropriated, reserving to its and to the Indians of said reservation and to its other Indian wards all the waters of the Gila River, and all property rights of any nature theretofore reserved, appropriated to it or claimed by or for the United States or its Indian wards or any of them, the said notice of appropriation being duly filed and recorded in the office of the County Recorder of Pinal County May 22, 1916, in Book 15 of Miscellaneous records at pages 393, et seq.

4. That pursuant to Act of Congress approved August 1, 1914, to-wit: the (Indian Appropriation Act) there was provided for all purposes necessary for the proper conduct of surveys, observations and examinations to determine the extent of water rights in and to the normal and flood flow of the said Gila River, in connection with the old Indian ditches on the Gila River Indian Reservation an appropriation by Congress of the sum of $50,000; that a report, known as the San Carlos Irrigation Project report was duly made to the Commissioner of

Indian Affairs, Department of the Interior, pursuant to said act on to-wit: November 1, 1915, by the Engineer of the Indian Service, which report recommended as follows, to-wit:

> 1. That part of the San Carlos project involving the construction of the San Carlos dam and reservoir be deferred.
>
> 2. The two diversion dams across the Gila River described in this report, one above Florence [illegible] second above Sacaton, with the necessary feeder canals, be constructed in the immediate future.
>
> 3. The title to the San Carlos reservoir site and as far as practicable the title to the other reservoir sites along the Gila and its tributaries be retained by the United States.
>
> 4. The investigations to determine the effect of the irrigation in the Duncan and Solomonville Valleys upon the flow of the Gila at and near the Gila River Reservation be continued. This is important to enable the Government to properly protect the water rights of the reservation and those of the project here recommended.
>
> 5. To provide for the construction of the diversion dams and main canals, $1,361,177 be appropriated to remain available until the completion of the work.

that thereafter and pursuant to Acts of Congress approved respectively May 18, 1916, (Indian Appropriation Act) and May 25, 1918, (Indian Appropriation Act), the plaintiff by and through the said Indian Service constructed the said diversion dam and necessary controlling works for diverting water from the Gila River at the said point above

Florence, Arizona, and is now constructing a diversion dam and necessary controlling works for diverting water from the Gila River at the said point above Sacaton, Arizona, which diversion dams were, by the said Acts of Congress constructed as a part of a project for the irrigation from the natural flow of the Gila River, of the said lands within the Gila River Indian Reservation together with certain other public and private lands in the said County of Pinal comprising 27,000 acres and being situate and located in Townships South and East of the Gila and Salt River Base and Meridian as follows, to-wit

Township 4 South Ranges 8, 9 and 10 East,
Township 5 South, Ranges 7, 8, 9 and 10 East,
Township 6 South, Ranges 5, 6, 7, 8 and 9
East, Township 7 South, Ranges 5, 6 and 7 East;

that the water diverted from the Gila River by the said diversion dams has been at all times since the construction thereof and is now distributed by the Secretary of the Interior to such lands in said Gila River Indian Reservation as the Secretary of the Interior has designated as temporarily entitled to be irrigated as a part of said project and to those lands to which said Secretary has permanently devoted the Indian water rights of said project and to the said 27,000 acres of privately owned lands heretofore designated and selected by the Secretary of the [Illegible] having the best right to the use of the waters of the Gila River in accordance with the respective rights and priorities of such lands to the beneficial use of the said waters as determined by said agreements heretofore made by and between the owners thereof and the said Secretary; that the construction charge for the actual cost of said diversion dams and other works and rights is to be by the Secretary of the Interior divided equitably between

the said Indian lands and the said 27,000 acres of private and public lands served thereby will be charged to and will be paid by the owners and entrymen; of the said 27,000 acres of lands in accordance with the said Appropriation Acts of the United States relating to payment for the said diversion dams and other works and rights, and the said charges constitute a subsisting and valid lien upon said 27,000 acres; that the owners of the said 27,000 acres of lands, so designated by the Secretary of the Interior, have heretofore conveyed to the plaintiff, for use in behalf of the said Indians and themselves, their respective rights of water appropriation, together with certain of their canals and other works, and by virtue of said conveyances the plaintiff is entitled to the use and control of all of the water which has heretofore been appropriated for the use of said lands.

That the said Indian Service is, by Act of Congress approved June 7, 1924, (San Carlos Irrigation Project) authorized to construct a dam across the canyon of the Gila River near San Carlos in the District of Arizona, as a part of said San Carlos Irrigation Project as contemplated in the said report of the Chief Engineer of the Indian Irrigation denied to the Commissioner of Indian Affairs of November 1, 1915, at a limit of cost of $5,500,000 for the purpose, first, of providing water for [Illegible] irrigation of lands allotted to Pima Indians on the said Gila River Reservation, Arizona, now without an adequate supply of water, and, second, for the irrigation of such other lands [Illegible] private ownership, as in the opinion of said Secretary, can be served with water impounded by said dam, without diminishing the supply necessary for said Indian lands.

5. That the sole source of water necessary and proper for the economical and successful irrigation and cultivation of such lands under the said San Carlos Irrigation Project is the said Gila River together with its tributaries thereto lying to the East of the said Gila Indian Reservation, to-wit: The San Pedro River, the San Carlos River, San Francisco River, Blue River and Eagle Creek; that the average low normal water flow of said Gila River and its tributaries excepting the San Pedro River at the site of the said proposed storage dam, to-wit: San Carlos is approximately 130 second feet; that the minimum run-off per annum of the said Gila River and its tributaries excepting the San Pedro River at the said proposed dam site is so small that all lands entitled to water may not be served unless the plaintiff is allowed to control the diversion of all the water in the Gila River and impound them in storage without interfering with the legal rights of the defendants; that the maximum run off per annum of the said Gila River and its tributaries excepting the San Pedro at the said proposed dam site is 1,589,800 acre feet; that the low water average run-off per annum of the said Gila River and its tributaries excepting the San Pedro at the said proposed dam site is less than 252,529 acre feet; that the mean annual flow of the said Gila River and its tributaries excepting the San Pedro at the said proposed dam site is 406,000 acre feet; that a large proportion of the total run-off occurs in times of flood water and that said times of flood water are and have been for many years intermittent, allowing four or five dry years to occur successively that the flow of the said San Pedro River at all times amounts to one-tenth more or less of the said flow of the Gila River and its tributaries hereinabove mentioned; that the successful and economical operation of the said San Carlos Irrigation Project is dependent upon the control by

the plaintiff of the diversion of the entire flow of the said Gila River and its tributaries to those defendants who are legally entitled thereto, to the end that the maximum supply of water may come at all times to the said proposed storage dam and the said diversion dams comprising the said San Carlos Irrigation Project as hereinabove described; that the said Gila River Indian Reservation as a whole and the said 3,000 acres of the White Mountain or San Carlos Indian Reservation will be made unfit for the purposes for which it was created and incapable of maintaining the said Indians if the waters of the Gila River and its tributaries are allowed to be unduly diverted before coming to the storage works of the said San Carlos Irrigation Project; that by means of the diversion and use of the waters of the said Gila River and its tributaries as contemplated by the said Acts of Congress hereinabove mentioned the United States will be enabled more effectually to train, encourage and accustom the said Indians residing upon said reservations to habits of industry and to promote their civilization and improvement and the control by the plaintiff and proper use of all of the waters of the said Gila River and its tributaries is necessary for these purposes; that by the unauthorized or unlawful taking of the water to which said Indians are and have been entitled certain of the defendants have obtained for themselves appropriations or attempted appropriations of waters of said Gila River and its tributaries, all to the loss and damage of said Indians and the plaintiff.

6. That by reason of the matters and things hereinabove set forth the United States has reserved and appropriated and owns and is entitled to use, directly or through the said San Carlos storage dam for said San Carlos irrigation project and on the aforesaid lands and any lands

now or hereafter to be embraced therein, and for and on said Indian Reservations, whether embraced within said project or not, and for power purposes, all of the waters of the said Gila River and its tributaries, whether natural flow or flood waters which may be necessary for the economic and successful irrigation and cultivation of said lands continuously throughout the year without undue interference by the defendants.

7. The defendants and either of them claim to have some right, title, or interest in to or of the waters of the said Gila River and its tributaries in the District of Arizona and in the District of New Mexico, or claim the right to divert said waters or some of them from said river in Arizona or New Mexico and to carry them by canals or ditches into and use them in Arizona or New Mexico, and they and either of them claim the right to divert said waters or some of them from said river or its tributaries and to use them for irrigation, power, or other purposes, and they and either of them have diverted and are diverting or threaten to divert said waters or some of them from said Gila River or its tributaries and to use them for irrigation, power or other purposes that the interests of the defendants and either of them in the said Gila River, its tributaries and the waters thereof as claimed by said defendants and either of them are numerous and various, and under said claims the defendants and either of them are diverting or will divert unless restrained by this court, the said waters or a part thereof by means of their various canals, its ditches or other equipment to the loss and damage of the plaintiff, thereby making it impossible for the plaintiff to fulfill its duty as directed by the aforesaid Acts of Congress, and either of them; that the flow of the waters in the said Gila River and its tributaries is fluctuating and

irregular, varying greatly from day to day, month to month, season to season and year to year, and in seasons of scarcity and at times of low waters and waters of said Gila River and its tributaries are insufficient to supply the claims of all of the claimants thereto or of the parties hereto that the plaintiff has no knowledge or information sufficient to form a belief of the exact nature of the claims of the defendants or of the claims of either of them to the use of said water [Illegible] to the extent, priority or otherwise, either as against the plaintiff or as against each other; that the rights to the use of said waters as claimed by the defendants and either of them are in conflict with and adverse to the rights of the plaintiff as hereinabove set forth and with each other and the rights claimed by said defendants and either of them if exercised would and when exercised do diminish the volume of the waters in said Gila River and its tributaries so as to deprive the plaintiff of the amount of water to which it is entitled.

8. Forasmuch as the plaintiff has no remedy in the premises by the strict rules of the common law and can obtain relief only in a court of equity where matters of this nature are properly cognizable and relievable, and forasmuch as the aforesaid acts of the defendants and either of them, if continued will result in irreparable injury and damage to the plaintiff, and forasmuch as the plaintiff cannot properly protect its rights in and to the said waters until the several rights of the various claimants, parties hereto, to the use of the waters flowing in said Gila River and its said tributaries in Arizona and New Mexico have been settled, and the extent, nature, and order in time of each right to divert said waters from said Gila River and its tributaries has been judicially determined, and forasmuch as the plaintiff cannot properly protect its rights in

and to the said waters otherwise than is herein sought without necessitating a multiplicity of suits, plaintiff therefore prays:

FIRST: That a subpoena may be issued out of and under the seal of this Honorable Court directed to the above named defendants who are residents of the said District of Arizona as aforesaid and that warning orders may be duly issued to such of said defendants as are residents of the District of New Mexico and that an order for service upon such defendants as cannot be found be duly published, according to law commanding them and each of them to appear before this Honorable Court on a certain day and under a certain penalty to be herein inserted, to answer this Bill of Complaint sentence by sentence and paragraph by paragraph the same as if the same were again repeated [Illegible] him thereunto particularly interrogated, setting up fully [Illegible] claims to the waters of the said Gila River and its tributaries;

SECOND: That the court by its decree determine the relative rights of the parties hereto, in area and extent, and in duration according to their relative rights respectively in priority of appropriation, in to and of the waters of the said Gila River and its tributaries in Arizona and New Mexico, including natural flow and flood waters, to the end that it may be known how much of said waters may be diverted from said river by the parties hereto and for what purposes, where, by what means of diversion and with what priorities;

THIRD: That the court decree to the United States of America the water rights hereinabove set forth and claimed by and for the United States, on behalf of the Indians and all other persons, and quiet its title therein

and thereto, and enjoin said defendants and either of them from interfering therewith, and provide such other means for the carrying out of its decree herein as may be proper;

FOURTH: That the court appoint and authorize its Water Commissioner to act during the pendency of this cause to make frequent measurements of the flow of the Gila River and its said tributaries and to regulate the diversions and uses of water by the defendants under the orders and direction of this court during the time while this suit is pending, without prejudice to any right which any party hereto may hereafter establish.

FIFTH: That the plaintiffs have such further relief or such other relief as may be agreeable to equity together with general relief and recover its costs herein incurred.

And plaintiff will ever pray.

JOHN G. SARGENT
The Attorney General
of the United States
By /s/ Harold Baxter
Special Assistant to the
ttorney General of the
United States

UNITED STATES OF AMERICA,)
)
DISTRICT OF ARIZONA,) ss.
)
COUNTY OF MARICOPA.)

HAROLD BAXTER being first duly sworn deposes and says: That he is the duly appointed, qualified and acting Special Assistant to The Attorney General of the United States and as such officer is authorized to institute the above entitled action; that as such officer he makes

this affidavit for and on behalf of the United States of America, plaintiff herein; that he has prepared the foregoing Bill of Complaint and knows the contents thereof; that the matters and things therein alleged are true and are based upon his knowledge, information and belief and upon data furnished to him by the Department of the Interior.

/s/ Harold Baxter

Subscribed and sworn to before me this 2nd day of October A.D. 1925.

/s/ Allan C. Elder
Notary Public in and for
Maricopa County,
State of Arizona

[SEAL]

My commission expires January 23, 1928.

APPENDIX 2

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE DISTRICT OF ARIZONA

THE UNITED STATES OF AMERICA, Plaintiff, -v- GILA VALLEY IRRIGATION DISTRICT, ET AL, Defendants.	GLOBE EQUITY NO. 59. AMENDED COMPLAINT.

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1. The United States of America, having first obtained leave of the Court, brings this, its Amended Bill of Complaint against the following named defendants:

GILA VALLEY IRRIGATION DISTRICT;
Brown Canal Company:

Edward Carpenter, Ezra Curtis, Estate of Damas DeLeon, Juvenal Perolas, Administrator, Claro Dominiques, J. W. Karven, Catalina Entzminger, Amadeo Fajardo, L. B. Head, P. Johnson, David Jurado, Abran Eadrid, Edwin Moody, Espedion Sadilla, Abel Sanchez, Adiel Sanchez, Daniel Sanchez, Eliseo Sanchez, Isias Sanchez, Manuel Sanchez, Santos Serna, T. J. Steward, John T. Traylor, H. C. Usher, Estate of Harry Van Order, Harry Van Order, Administrator;

Colvin-Jones Canal Company:

W. F. Bollinger, Hugh C. Hamman, George W. Healy, C. N. Higgins, Mrs. W. E. Irwin;

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Colvin-Jones Consolidated Ditch Company;
Curtis Canal Company:

Jaared T. Brown, Adelaide M. Bryce, Heber B. Bryce, E. G. Bullard, J. D. Busby, Frank Carpenter, Lester Carpenter, William Carpenter, Antone Christensen, John D. Colvin, Mrs. Elizabeth Curtis, Eugene Curtis, F. M. Ferrell, C. E. Ferrin, Thomas F. Fuller, William Fuller, E. E. Hancock, Ira Hancock, Jesse A. Hancock, Elijah Hawkins, J. N. Hawkins, Scott Holladay, Asa B. Kempton, A. J. Kempton, Calvin I. Kempton, Fred Kempton, Heber Kempton, Heber C. Kimball, Layton & Ison, Amy T. Leavitt, Claude M. Lee, James A. McBride, A. F. McEuen, E. D. McEuen, E. W. McEuen, M. P. McEuen, Virgil R. McEuen, W. G. Marshall, Miles Messinger, Anna M. Moyes, Joseph Moyes, Aron T. Nelson, E. Palmer, Isaac O. Palmer, Lee L. Palmer, Roy Palmer, Van D. Palmer, Henry E. Plumb, J. M. Plumb, D. Raper, B. O. Rapier, John Saline, W. D. Saline, Alva Thatcher, L. M. Thatcher, Perry Tyron, Henry A. Waters, A. A. Wilkins;

Dodge Canal Company:

Lewis Allen, H. J. Anderson, C. D. Boren, W. A. Carter, Sr., Estate of E. L. Carter, Alof F. Carter, Administrator, A. J. Curtis, Mrs. Frank Curtis, Thomas Dodge, Benjamin Echols, H. B. Elledge, C. E. Farley, F. A. Ferrell, I. A. Follett, Joseph E. Follett, John H. Foster, John Hicks, A. C. Hunt, Leo Keiffer, Earl Larson, Ephriam Larson, James M. Larson, Lehi Larson, Sr., W. A. Lines, D. C. McBride, P. H. McBride, P. H. MC-Bride, Jr., W. E. McBride, C. J. McElroy, Martha McElroy, J. A. Mack, J. H. Mack, S. S. Marshall, C. A. Matthews, D. H. Matthews, Eliza Matthews, Jane L. Mattice, Lewis P. Mattice, P. A. Morton, F. Sanchez, Roy Saline, William C. Taylor, A. T. West, Mrs. Charlotte Wilkins;

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Fort Thomas Consolidated Canal Company:

L. A. Adams, George P. Ballard, Pablo Barela, Thomas H. Bell, Mrs. John J. Birdno, E. W. Black, L. J. Brown, Jr., William Boren, A. J. Bryce, David J. Brude, E. P. Bryce, W. C. Bryce, John Carpenter, Charles S. Clark, H. L. Colvin, Grady Coppedge, Charles E. Dallas, A. B. Decker, Mrs. Henry Dial, J. H. Elmer, C. J. Farrington, Robert Ferrin, J. H. Fine, Juan Garcia, Forrest Gilliland, J. L. Green, C. J. Grover, G. J. Hatch, Sam Henry, Mrs. Clara Hinton, J. N. Holyoak, William H. Holyoak, E. D. Householder, Thomas H. Hundley, Mrs. S. L. Hunter, Charles P. Johns, Norman J. Johnson, James E. Jones, R. H. Kempton, C. M. Layton, Jr., Charles M. Layton, Claude M. Lee, J. Y. Lee, A. O. Mack, Angus Maloy, M. D. Maloy, George A. Mathews, Emma B. Mellinger, P. M. Merrill, Leslie Montierty, Wendell Montierth, D. T. Notes, P. L. Notes, J. R. Naillon, Asa Packer, E. K. Packer, Jacob Peters, W. A. Pitt, W. E. Platt, E. M. PLUMB, J. E. Pulsipher, T. J. Rex, S. E. Reynolds, George F. Richards, Gilbert Richardson, W. R. Roach, David Rogers, C. N. Rose, Niels J. Roseberry, R. R. Shipp, A. A. Smith, L. W. Smith, Charles F. Solomon, W. R. Summers, L. M. Taylor, George A. Todd, W. O. Tuttle, Oscar Tyler, William O. Tyler, M. P. Tyron, Charles Wamslee, William Wamslee, F. A. Webster, A. E. Weech, T. L. Willis, Alonzo Winsor, Carrie B. Yett, Dan Young;

Fourness Canal Company:

Mrs. Clara Fourness, J. M. Grijalva, Jose Morales;

Graham Canal Company:

D. E. Adams, J. A. Allen, John Billingsley, W. M. Blair, Estate of A. N. Bryce, Bell Kempton, Administratrix, J. W. Bryce, R. A. Bryce, William E. Bryce, Mary Butler, W. F. Butler, Jr., Mrs. A. W. Chesley, J. E. Chesley, H. R. Chlarson, John C. Cosper, Guy Dixon, A. J. Dodge, J. W. Felshaw, J. A. Foster, J. L. Foutz, J. R. Golding, John L.

Hoopes, E. D. Howard, Joseph Howard, J. M. Howard, S. D. Howard, Almera Hubbard, R. D. Lamoreaux, Thomas McGuire, C. M. Mackey, Robert Mackey, Simon Mathews, John W. Mattice, Martha A. Merrill, J. R. Moore, S. N. Norton, John Nulton, J. N. Nuttall, J. I. Palmer, George O. Peck, William A. Peck, Alma Peterson, P. O. Peterson, Wilfred Peterson, Robert E. Reed, Carlysle Reynolds, George Sanders, D. W. Sanders, Francis M. Skinner, Maroni Skinner, W. H. Spafford, Pratt Stewart, Brigham Stowell, D. V. A. Talley, James M. Talley, K. V. B. Talley, J. T. Talley, T. Hugh Talley, Van Talley, Jerome Walker, J. P. Walker, Mattie Wamslee, T. W. Wamslee, Charles Watson;

Montezuma Consolidated Canal Company:

C. A. Allred, W. N. Baker, Fannie Bailey, Estate of R. H. Beers, Frank V. Beers, Administrator, Estate of Mrs. N. A. Bell, Lee N. Straton, Administrator, W. A. Bennet, John Bilby, Hyrum Bingham, J. H. Bingham, Lester Bingham, Warren Bingham, Mrs. Thomas Blake, T. F. Boggs, Charles Boots, Gratz D. Brown, Charles Burrell, George Burrell, Mrs. Jesus Carrasco, J. A. Chapman, D. W. Cheney, Aeshel Clifford, Elijah Clifford, Henry Clifford, Sr., L. A. Clifford, W. H. Clifford, Evans Coleman, James Corder, Henry Crabbe, G. L. Crawford, Mrs. Virginia Curtis, John R. Davidson, Davidsel Ellsworth, Francis Ellsworth, William Ellsworth, Hart D. Empie, Mrs. Belle Epley, Austin Evans, George C. Evans, Hugh Foster, Orson F. Foote, J. L. Freeman, Charles E. Freestone, R. L. Freestone, Victoriano Garcia, Albert Gillespie, Edward L. Gillespie, James Gillespie, Shell Gillespie, William H. Gillespie, J. W. Greenhalgh, R. H. Greenhalgh, Ramon Guana, Spence C. Heywood, Martin Jacobson, D. L. Johns, S. L. Johns, L. A. Johns, W. A. Johns, George Killian, F. E. Kirkpatrick, Guy W. Lamoreaux, Maroni Larson, Alex Layton, J. D. Lee, Marion Lee, Kimball Maxham, Ben Mauer, R. L. McAllister, H. M. Merrill, S. A. Merrill, Mrs. J. S. Miles, E. E. Montierth, M. G. Montierth, Mrs. Belle

Morris, M. Mortensen, Ernest Motes, L. A. Nelson, W. L. Nelson, Elma Olesen, Oscar Olsen, O. E. Owens, Mrs. Isabelle Pace, Joaquin Padilla, Mrs. Marcelina Padilla, Mrs. Nancy Palmer, Calista B. Peel, S. A. Powell, Sarah E. Reed, Mrs. W. R. Reed, J. F. Rhinehart, I. P. Robinson, C. B. Sale, J. W. N. Scarlett, L. B. Scarlett, S. E. D. Sears, Mrs. Martha Skinner, R. A. Smith, Sr., Mrs. W. R. Smith, Mrs. J. B. Smithson, S. A. Sowell, Mrs. C. F. Stanley, Albert Stephens, E. P. Stuermer, N. W. Stevenson, John Stowe, William H. Taylor, Mrs. H. E. Warner, Adam Welker, Arthur Welker, C. D. Welker, J. A. Welker, Willard Welker, John West, Fred H. Wiemer, W. W. Wild, Dan Williams, Estate of J. R. Williams, Isaac Williamson, Mrs. W. A. Wilson;

San Jose Canal Company:

H. L. Alexander, Sesario Alvillar, Felix Bareda, W. T. Barney, Innocente Bartolda, Severa Bartolda, Ed Blake, Wallace Branch, G. A. Bryce, V. Carrasco, W. W. Chapman, Pablo Chevarria, Ammon Curtis, Cleve Curtis, Don Curtis, Emery Adelbert Curtis, Etta G. Deller, Ramolda Elias, Ernest Ellsworth, Miguel Encinas, John C. Epley, Luther Farley, Jose Figuerroa, Elias Flores, Nora Floyd, W. R. Foote, Augustin Franco, Pedro Franco, Alma Freestone, P. H. Freudenthal, Archie Fuller, Casimiro Garcia, G. Garcia, Jesus Garcia, Jose B. Garcia, Rafael Garcia, Tomas Garcia, Marajilda Garcia, Thomas Bardner, Fernando Gervantez, Mrs. S. C. Gonzales, Epitacio Granilla, John H. Harper, Delbert Hatch, George L. Hatch, Calvin Hocker, S. N. Holman, James Jensen, J. C. Johns, Mrs. Margaret R. Kempton, Donald Kennedy, Leslie W. Layton, S. Marcus, Juan Martinez, C. V. Massey, Mrs. L. A. Massey, J. T. Massey, John M. Mattice, Mrs. F. M. Medhurst, Manuel Mandez, Louis Michelena, Mrs. M. Michelena, Sisto Molino, Francisco Montez, Jesus Montez, Cicero Morris, Frank Morris, George Albert Morris, Robert Morris, Braulio Ochoba, Victorino Olivas, A. T. Pollock, Anastacio Quiroz, W. G. Richards, Lito Rios, Jose Samora,

Andreas Serna, Mathews Stuart, Ida Tidwell, Jose Verale, Emula Viala, Jose Villareal, W. R. Waddell, F. M. Woodward, W. A. Woolsey;

Smithville Canal Company:

D. T. Adams, Joseph Alder, E. M. Allred, J. N. Allred, Mrs. Maude Allred, Mrs. Sarah Barney, Thomas Batty, Walter Batty, Mrs. J. S. Beals, R. William Bingham, W. R. Bingham, Ben Blake, I. B. Blake, William Biglet, Mrs. Artie Branam, L. S. Branam, Mrs. Sarah Bryce, Albert Carter, Ethel B. Carty, Victor Christenson, H. J. Clark, W. A. Clark, B. F. Cluff, H. V. Coombs, H. W. Crockett, W. W. Crockett, M. M. Curtis, L. C. Cutler, Mrs. Lyman Dodge, A. M. Farmer, C. J. Farrington, L. L. Follett, W. L. Follett, Karl Foster, A. Harper, George A. Hoops, D. C. Johnson, J. D. Kennison, Charles Kerby, Thomas E. Kimball, E. M. Labson, A. O. Lamoreaux, Beatrice Larson, Charles S. Larson, Joe Larson, Mrs. Olivea Larson, Orvil Larson, William Larson, Oscar G. Layton, Roy A. Layton, Al Lines, Joseph H. Lines, Milton Lines, Charles Luster, Ether McBride, Mrs. Laura McBride, Henry H. Mack, William S. Mack, Clarence Martin, J. B. Martin, J. S. Martin, Mrs. W. F. Martin, Roy A. Martin, Mrs. Chloe Martin, Gerald Merrill, G. W. Miller, Edward Moody, Winford Moody, H. L. Norton, Sr., H. L. Norton, Jr., J. C. Norton, J. E. Norton, William R. Norton, W. Ollerton, Asa Packard, Estate of Pensyl, P. C. Merrill, Administrator, E. C. Phillips, James H. Porter, W. J. Preston, Mrs. Mary Reynolds, Charles Rogers, Ethlion Saline, J. E. Schurtz, Mrs. John Shields, A. J. Shiflet, H. L. Smith, M. M. Smith, J. W. Sowell, F. R. Taylor, John E. Taylor, Antonio Vasquez, Lorenzo Watson, B. F. Whitmer, Jr., S. O. Williams;

Smithville Extension Canal Company;
Union Canal Company:

Ephriam J. Allen, John W. Allen, S. E. Allen, Della Allred, Edith M. Allred, Elden Allred, Myron J. Allred, Phoebe

Allred, Ruth Allred, Tom Aranda, Mrs. V. M. Baker, Mrs. Sophia Barney, E. D. Barry, C. M. Beal, J. H. Beal, William N. Beebe, D. W. Birdno, Mary Lorraine Birdno, Edsil Blain, S. B. Blake, H. G. Boyle, William Brunson, Manuel Burrell, Antone Carreon, P. Chendilla, Citizens' Bank, Edward M. Claridge, H. S. Clarke, Mrs. J. E. Cluff, John Cluff, Cluff & Mitchell, Estate of Cluff, Benjemin F. Cluff, Administrator, C. S. Conway, C. L. Coombs, George Coombs, Isaac Coombs, N. E. Coombs, William Coombs, Mrs. W. E. Craig, G. E. Crandall, R. D. Crandall, Mrs. Julia Daly, Willis K. Daly, Mrs. Hester Damron, Z. B. Decker, David Dodge, J. M. Dominges, Mrs. Lily Duke, Estate of Orson Elliott, W. A. Posy, Administrator, Mrs. Charlotte F. Elmer, Mrs. Sarah S. Elmer, P. Estrada, E. C. Eyring, J. A. Farley, M. P. Ferguson, Ether S. Ferrin, W. P. Ferris, W. M. Ferrin, Seth P. Fletcher, George Foote, M. S. Freeman, Lawrence Fuller, Millard Fyfe, E. Gallego, Charles Gietz, J. R. Gillmore, Mrs. Francis Goodman, George A. Gourley, Mattie Graham, Reece D. Green, F. H. Halladay (being the same person named in the original complaint as John Doe Halladay), H. G. Harms, C. D. Haynie, Estate of F. W. Hays, C. S. Conway, Administrator, C. M. Hendricks, Heber M. Higgins, Mrs. Arthusa Hoopes, Bert Hoopes, H. E. Hoopes, Sarah A. Hunt, George P. Jacobson, P. J. Jacobson, S. L. Jenkins, S. P. Jenkins, David John, Mrs. William Johns, Orlando Jolly, P. M. Kelly, Ira N. Kempton, Spencer Kimball, P. M. Kelly, Charles Kruger, Cora Kruger, C. O. Larson, Mildred B. Larson, H. W. Layton, James Layton, M. M. Layton, R. G. Layton, Jr., Mrs. W. A. Lewis, Mrs. Nisia Lindsey, Mrs. Laura McCullom, W. J. Mallon, James Mallon, G. B. Maloy, Clark Mangum, J. A. Martin, Miquel Mena, Damesio O. Meraz, P. C. Merrill, George Montierth, J. M. Moody, E. M. Morris, John W. Morris, William Morris, C. N. Motes, N. Ortiz, Elsie L. Overly, J. T. Owens, Jr., Mrs. C. R. Pace, I. J. Palmer, W. W. Pace, Mable Perkins, Maranda Perkins, Jesse C. Phillips, Rudger Phillips, Ben T. Platt, N. E. Platt, S. V. Pollack, S. V. Porter, W. A. Posy,

W. E. Posy, M. F. Preston, W. F. Preston, D. T. Preston, Harriett Pulsipher, Pursley & Nash, Jesse B. Quinn, Miles Reay, A. Rohner, H. P. Rogers, Joseph Rogers, Mrs. Louisa Rogers, Clarence Scarlett, W. F. Scarlett, J. S. Shifflet, Mrs. D. E. Smith, E. D. Smith, Joanna Smith, J. M. Smith, W. D. Spear, H. M. Tate, Sarah Taylor, P. H. Teeple, S. B. Tenny, Jr., Frank N. Tyler, George Van Gausig, W. J. Walton, Mrs. J. C. Wamalee, Fred Waughtal, Fred Webb, J. D. Webb, Estate of Webster, F. A. Webster, Administrator, O. F. Webster, William Webster, R. A. Welker, B. F. Whitmer, Sr., Mrs. Mildred Whitmer, J. M. Wilson, Mrs. Virgia R. Wilson, Young & Ridgway;

Tidwell Canal Company: E. L. Tidwell;

FRANKLIN IRRIGATION DISTRICT

Billingsley Canal Company; Billingsley Extension Canal Company; Black & McCleskey Canal Company (being the same company named in the original complaint as the Black & McCluskey Canal Company):

W. W. Brooks, R. F. Cloudt, Floyd Hightower, B. A. Wilson;

Burtcher Ditch Company; Colmenero Canal Company:

Estate of David Buck, Nellie E. Buck, Administratrix, Tim Chapman, J. K. Chilton, George H. Cosper, J. H. Cready, Mrs. M. J. Daniels; J. B. Fullerton, F. N. Gault, W. A. Gill, H. B. Harris, Waide Harris, Theodore H. Moody, J. G. Smith, Charles Telles, Sam R. Tilley:

Consolidated Canal Company; Cosper-Wilson Canal Company, Cosper & Windham Canal Company:

B. F. Billingsley, J. C. Burleson (being the same person named in the original complaint as J. C. Burlison), W. C. Craufurd (being the same person named in the original complaint as W. C. Crawford), J. M. Gilliland (being the

same person named in the original complaint as J. M. Gilleland);

Cosper-Windham Extension Canal Company; Duncan Canal Company:

T. J. Branyon, M. H. Brooks, J. W. Carter, Mrs. Maggie Cauthen, C. W. Collins, F. M. Craig, David Davis, Mrs. M. A. Dees, John Evans, J. R. Fowler, Estate of Francese, Ernesta Francese, Administrator, Mrs. S. L. Kemp, A. N. Livvix, C. C. Martin, J. A. Martin, Reputhio Moriz, J. P. Oberholser, W. U. Phillpot, Rebecca Richardson, Sarah L. Richardson, Romney Brothers, Mrs. E. M. Simmons, George Utter;

Franklin Canal Company; Greenhorn Irrigating Canal; Hill Ditch; Martin & Pearson Ditch; Martin & Pearson Irrigating Canal Company; Moddle Canal Company:

J. L. Aker, T. W. Arnett, D. E. Barlow, Silas Bradshaw, David F. Campbell, Jr., L. T. Christensen, M. A. Clause, F. M. Crockett, Bank of Duncan, Joseph C. Elledge, R. E. Elledge, W. H. Elledge, Amos Fearin, Furr & Blain, Mrs. E. A. Gale, I. B. Gale, W. T. Gale, Aubra Gilliland, Nellie R. Hoch, G. W. Johnson, R. J. McClaren, E. A. Merrill, T. S. Merrill, W. T. Mosley, L. D. Moyers, L. G. Moyers, W. F. Moyers, T. J. Nations, O. G. Odell, James Opie, W. C. Packer, C. O. Passmore, Mrs. M. E. Pittman, G. W. Quinn, J. R. Robbs, Frank Schultz, Jesse B. Simms, V. Soto, M. E. Stewart, Mrs. R. S. Stewart, George W. Stinson, T. L. Stockton, Nicholas Suarez, Alvin Warner, D. E. Wilkins, E. J. Wilkins, J. D. Wilkins, George W. Wyatt;

Rucker Ditch, Sexton Ditch Company:

H. Albert, W. Bleinstein, Mussett Cosper, and West White;

Sunset Irrigating Canal Company, York Canal Company:

Thomas Crabtree, E. Day (being the same person named in the original Complaint as John Doe Day), Gus Duncan, W. D. Tucker, Judd Webster, George A. Wilson, N. C. Wright;

VIRDEN IRRIGATION DISTRICT

Cosper-Windham Canal Company:

J. R. Beavers, H. G. Davidson (being the same person named in the original complaint as E. G. Davidson), Estate of Jasper Gale, A. T. Layton, R. H. Lunt, Arven Mortensen (being the same person named in the original complaint as Arvin Mortensen), Peter Mortensen, W. Plune Tibbets (being the same person named in the original complaint as P. Tibbets), Peter Wahlin (being the same person named in the original complaint as Peter Whelin), Mrs. T. M. Williamson (being the same person named in the original complaint as T. M. Williamson);

Greenhorn Ditch Company; Shriver Ditch Company:

W. W. Lloyd, Frank Shriver (being the same person named in the original complaint as John Shrivers), W. F. Shriver;

Sunset Canal Company:

Florentine Billaba, C. M. Brooks, R. W. Brooks, S. A. Brown, J. E. Cardon, Byron Echols, M. B. Echols, W. P. Foster, Trivio Gonzales, H. Grady, M. L. Harris (being the same person named in the original complaint as (M. F. Harris), C. F. Houlihan) being the same person named in the original complaint as C. F. Houhilan), K. J. Jensen, J.

E. Johns, R. T. Johns, Delbert Johnson (being the same person named in the original complaint as D. Johnson), D. L. Johnson, F. W. Jones, John B. Jones, Mary Jane Jones, Parley P. Jones (being the same person named in the original complaint as Perley P. Jones), T. V. Jones, Willard E. Jones (being the same person named in the original complaint as Willard L. Jones), Anna H. Lunt, G. V. Lunt, P. L. Lunt, M. J. McClaren, Orson A. Merrill (being the same person named in the original complaint as Orson Merrill), Ferley F. Merrill, Hans Mortensen, Hiram K. Mortnsen, Joseph A. Mortensen, Mrs. J. O. Pace, E. C. Payne, G. O. Payne, Junius E. Payne, Leslie B. Payne (being the same person named in the original complaint as L. Payne), H. M. Payne (being the same person named in the original complaint as H. N. Payne), R. Richardson, Henry L. Smith, B. Y. Whipple (being the same person named in the original complaint as D. Y. Whipple).

Valley Canal Company:

Mrs. Eliza Alexander, T. J. Anderson, T. W. Brown, Betty Marsh Cheatham, G. I. Elmer, Emil Girard (being the same person named in the original complaint as E. Girard), John Hagan (being the same person named in the original complaint as John Hagen), G. Lynn Hatch (being the same person named in the original complaint as G. Len Hatch), C. F. Hill, J. W. Hill, Culver Kartchner, J. H. Kerby, George A. Lunt (being the same person named in the original complaint as George Lunt), Heaton Lunt, Owen Lunt, W. V. McCarty, Frank McGrath, William Manake, Robert M. Montgomery (being the same person named in the original complaint as Robert Montgomery), H. J. Nunn, T. A. Nunn, C. Pirtel, W. T. Sanders, Andy Scott, Brooks Scott, Sinclair Realty Company, Estate of

Spoon (Ira L. Spoon, Administrator), A. L. Stewart, J. L. T. Watters, Joe Whitridge;

and A. Allen, American Smelting & Refining Company, A. A. Anderson, John N. Anderson, Joseph J. Anderson, A. P. Angle, Mary A. Antenoil, Arizona Copper Company, Arizona Hercules Copper Company, State of Arizona, Aztec Mutual Canal Company, Estate of Walter A. Baitty, Homer H. Martin, Administrator, J. W. Baker, Henry Bamesberger, Ruth R. Barham, W. B. Barham, Estate of Thomas Barrett, Dan T. Peart, Administrator, Archie L. Bartlett, Pansy Kenower Bartlett, Madelene Bassler, Maude M. Bassler, Otis J. Baughn, Albert C. Becken, Grace R. Becken, Charles F. Bennett, George P. Bennett, Jarvus D. Bennett, D. Bertoglio, J. M. Biddle, Estate of Paul C. Blackmore, Peter Corpstein, Administrator, Francis D. Blair, Clifton Bogard, C. D. Bradley, Ida M. Bradley, John R. Bradshaw, Mary W. Bradshaw, Jackson Branaman, Ira S. Brayton, Esther A. Brockway, George M. Brockway, Marshall F. Brockway, Martha M. Brockway, Charlotte Hall Brown, Elizabeth Brown, J. H. Brown, J. P. Brown, Estate of W. F. Brown, P. D. Overfield, Administrator, Sarah B. Brown, Thresa Hall Brown, John J. Buggs, George W. Burgess, Josephine Burks, Lee Robinson Burris, Burris Brothers, John W. Burris, L. B. Cadwell, Ella Carpenter, Fred E. Carpenter, J. C. Carpenter, Casa Grande Valley Bank, Ypolita Cascarilla, Castlio Ditch, Louis Cathemer, W. L. Cauthen, Mike Celeya, E. D. Chandler, Estate of W. B. Charleston, John E. Charlton, Administrator, Albert J. Christensen, Simon Cisneros, Earl G. Clemans, Edith N. Clemans, Hazel H. Clemans, Mark Twin Clemans, Winnefred W. Clemans, W. P. Clements, W. J. Clemans, Jr., Mrs. Charles E. Cleveland, Inez H. Conrad, Thomas A. Crow, Jennie Davidson, John

H. Dennison, Pearl Dennison, Robert Denton, Maurice Dodd, Mira B. Doran, Double Circle Cattle Company, John Eastman, Tracy Eastman, Dud Eldridg, W. R. Elliott, Christobell G. Ellis, Ed Elredge, Frank C. Elwell, Joe Erny, Jesus Espinosa, Jose T. Espinosa, Juan S. Feliz, Manuel S. Feliz, Pedro S. Feliz, Salvadore S. Feliz, Fidelity Savings & Loan Association, First National Bank of Florence, C. A. Fitzgerald, Florence-Casa Grande Water Users' Association, Town of Florence, J. J. Fraser, James D. Freeman, Frisco Placer Mining Company, Lissa J. Fulton, May E. Furback, Fred E. Gack, Kathrina Gack, Anna N. Gale (being the same person named in the original complaint as Anna H. Gale), Estate of George F. Gallagher, Robert Denton, Administrator, L. D. Gamble, Dale M. Garden, Richard B. George, Richard E. Geyler, M. L. Gilbert, Louis Gilson, J. H. B. Glasspie, Gold Bullion Mining Company, Jose Gonzales, John MacGregor Goodale, Nellie R. Gochenover, George F. Graham, Joseph Greene, Virginia Griffin, Charles J. Gross, Virginia Hales, Mattie M. Hall, Frank E. Hamilton, John Hamilton, A. T. Hammans, Rec., May Catlin Hansen, Dessa Harbison, Jim Harper, J. B. Harsha, John M. Hatfield, Vernon W. Havins, G. H. Head (being the same person named in the original complaint as G. E. Head), A. W. Heath, Jacob Halfenstein, John Hendricks, A. S. Henry, Grady L. Herring (being the same person named in the original complaint as G. L. Herring), W. E. Herron, T. Hinton, Arthur Houser, Lattie F. Hunt, William Jackson, F. P. Jamieson, Edith B. Jamieson, J. C. Jamieson, James C. Jayne, Jensen Brothers, Rachel Jenson, E. R. Johnson, John A. Johnson, Horace J. Johnson, Mary Johnson, F. Vernon Jones, Richard J. Jones, Julia R. Julian, Fred R. Kenower, Ola R. Kenower, A. E. Keeler (being the same person named in the original complaint as A. E. Keeler), J.

F. Kepper (being the same person named in the original complaint as J. G. Kipper); William L. Keppler, H. B. Klingenberg, William G. Knight, Anna E. Kochsmeier, Frederick Kochsmeier, Henry Kochsmeier, Sr., Henry D. Kochsmeier, Maria Kochsmeier, Frederick K. Kratzka, Gustav Kratzka, James J. Kruse, J. E. LaFleur, W. W. Lane, Andronicio A. Larona (being the same person named in the original complaint as A. A. Larona), Rafael O. Larona, Dirk Lay, Elizabeth L. Lay, Lola LeBaron, Louise LeBaron, Estate of Lola W. Lee, Dan T. Peart, Administrator, J. T. Lewis, David A. Little, Minnie Lobb, Lula O. Lockerd, London Gila Mining Company, Estate of W. H. Lonergan, T. A. Lonergan, Administrator, Theodore Lujan, Brotten Lunt (being the same person named in the original complaint as B. Lunt), Edward Lunt (being the same person named in the original complaint as Ed Lunt), Randall Lunt, Vernon Lunt, May H. McBennett, A. L. McCann, Alpha E. McCann, Minnie M. McCann, James K. McCarty, Carrie McDowell, M. W. McDowell, Clara B. McFarland, Ernest W. McFarland, Gertrude B. McGee, D. T. McGuire, Hugh McKeen, Glen C. McKenzie, James F. McManis, Elizabeth P. McMurray, William C. McNatt, R. B. Maley, Melanie Mandell, Rita Marquez, Ralph K. Marshall, Ivey Marshall, Joe Marta, David Omer Martin, Ben B. Mathews, Josiah J. Maxcy, R. D. Melick, Katherine S. Mellon, Lillian C. Merchant, Martha M. Merrill, John B. Michia, Mary L. Miles, R. M. Miller, William Milligan, J. L. Mills, James A. Mitchell, Lillian I. Mitchell, Henry G. Moeller, Sidney B. Moeur, Ed Moody, Fayette Moore, Ethel M. Moorehouse, H. W. Moorehouse, Rolland H. Moorehouse, Vashti B. Moorehouse, Morenci Water Company, George W. Morrell, Alfred Mortenson, Margarete L. Murphy, Estate of Lizzie B. Murphy, W. E. Murphy, Sr., Administrator, J. S. Murry, L. S. Nafziger, M. N. Nafziger, John Nash, Nevada

Consolidated Copper Company (being succesors in interest to the Ray Consolidated Copper Company, named in the original complaint), S. W. Newman, Nichols & Company, C. H. Niemeyer, Alice E. Nixon, Catherine A. Norviel, John O'Brien, Lillian O'Connor, Olive J. O'Connor, George A. Olney, Lewis Olesen, Peter D. Overfield, Antonio S. Padilla, Florence Palamounter, Howard G. Palamounter, Roy F. Patrick, George W. Pattee, Harriet E. Pattee, Estate of Earl P. Patterson, Thomas D. Derry, Administrator, Willie K. Pearson, Emma Pennington, Walter J. Pennington, Beatrice Perry, Amandus C. Peters, Phelps Dodge Corporation, Addie Phillips, Margaret E. Pierce, Pinal Investment Company, Ely E. Piper, Frank Pinkley, James A. Pirkens, W. M. Pollock, Tomas Ponce, Grace P. Pottebaum, Robert H. Pottebaum, Dell K. Potter, Estate of W. Y. Price, Mrs. W. Y. Price, Alice M. Prouty, Lloyd W. Prouty, W. Scott Prouty, James B. Pruett, Edwin Ralph, John Ralston, Margaret T. Randall, Henderson H. Raybourn, A. V. Read, Martin J. Reed, Fern M. Richardson, H. G. Richardson, Ralph Richardson, W. H. Roach, Jennie Roberts, S. H. Rorabaugh, Bert E. Rose, Ralph M. Rounds, Andris V. Salazar, Christiana Salazar, Jose Sanchez, Luiz Santos, John Saxman, B. W. Scholtz, S. Schultz, Estate of Elizabeth Schultz, Fred T. Armstead, Administrator, William J. Schulze, Charles M. Schwab, Emma B. Schwarm, Estate of H. H. Scorce, E. B. Newman, Administrator, Clara C. Seagoe, George P. Sellers, Serano R. Sexton (being the same person named in the original complaint as R. Sexton) Ernest D. Shade), Elizabeth Shannon, Charles K. Shannon (being the same person named in the original complaint as C. M. Shannon, Mary L. Shannon, Walter Shayeb, Charles M. Sheafe, Helen S. Sheafe, James S. Sheafe, Mary S. Sheafe, George W. Sheerer, Chloren B. Shifflet, C. M. Short, Louisa Short,

Carrie S. Sigler, John Sigfrid, George W. Sigler, J. O. Simmons, Edward H. Sinclair, Helen Slaughter, Charles R. Sligh, Earl F. Smiley, George W. Smith, Ole H. Smith, A. R. Snyder, Southern Arizona Bank & Trust Company, Herbert G. Sparks, Antonio Specia, G. C. Springer, Charles D. Stahlberg, Glodine Stahlberg, Mary E. Stevens, A. G. Stevenson, W. R. Stevenson, Dugald Stewart, S. Stewart, T. V. Stokes, Walter W. Stovall, Tim Sullivan, H. B. Summers (being the same person named in the original complaint as John Doe Summers), Mae Tiffiny, Jose Tonis, Mrs. Billie Treat, James R. Treat, Don A. Trekell, Louis M. Trekell, S. Louise Trekell, Mary E. Truman, E. S. Turville, Mrs. A. C. Urban, F. A. Urban, Augustine Villar, Joe Villar, Valley Bank of Phoenix, Calbert L. Vance, Viola C. Vance, Ed G. VanHaren, Charles H. Vann, Estate of Jose Vasques, Charles F. Bennett, Administrator, Gregoria Vasquez, Bert Vidans, Louis Voelckel, George P. Walker, Fannie Wallrich, A. A. Walsworth, Ward & Courtney Dam Company (being the same company named in the original complaint as Warel & Courtney Dam Company), Harry Ward, Roy S. Ward, Albert Warren, C. E. Waterbury, Josie Waterbury, Katie E. Weaver, Adolphus Wayrick, William Whelin, Harry C. White, White Mountain Lumber Company, Natalia M. White, Dorcas E. Whitlow, H. B. Wiggins, W. G. Williams, Josephine R. Wills, Sophia Wind, Jessie P. Woody, Soren Yensen, York Cattle Company, and Elsie De Wolf Zellweger,

Answer under oath is hereby expressly waived.

For its cause of action the plaintiff alleges:

2. That the jurisdiction of this court in this suit depends upon the fact that the United States of America is a party thereto.

3. That this suit is brought by the United States for itself and as Trustee and Guardian for the Pima and Apache Indians, occupants and possessors of large areas of land with water rights appertaining thereto in the Gila River Indian Reservation and the San Carlos Indian Reservation, respectively, in the State of Arizona; and is instituted at the suggestion of the Secretary of the Interior and by direction and authority of the Attorney General.

4. (a) That the defendant, Gila Valley Irrigation District, is an irrigation district organized and existing under the laws of the State of Arizona, havings its principal place of business in Graham County in the District of Arizona; that the defendant, Florence-Casa Grande Water Users' Association, is an association authorized under the laws of the State of Arizona to do business in the District of Arizona, havings its principal place of business in the District of Arizona; that the defendant, Franklin Irrigation District, is an irrigation district organized and existing under the laws of the State of Arizona, having its principal place of business in Greenlee County in the District of Arizona; that the defendant, Virden Irrigation District, is an irrigation district now in process of organization under and pursuant to Chapter 41, and Session Laws of the State of New Mexico, 1919, and is being organized and incorporated as a body corporate and politic of said State of New Mexico.

(b) That certain others of the above-named defendants, to-wit: Arizona Copper Company, Brown Canal

Company, Colvin-Jones Canal Company, Colvin-Jones Consolidated Ditch Company, Consolidated Canal Company, Curtis Canal Company, Dodge Canal Company, Double Circle Cattle Company, Fort Thomas Consolidated Canal Company, Fourness Canal Company, Graham Canal Company, Montezuma Consolidated Canal Company, Hawkins and Simms Milling and Irrigating Company, San Jose Canal Company, Smithville Canal Company, Smithville Extension Canal Company, Union Canal Company, and Ward and Courtney Dam Company are corporations doing business in Graham County in the District of Arizona.

(c) That certain others of said defendants, to-wit: Billingsley Extension Canal Company, Burtcher Ditch Company, Castlio Ditch, Colmenero Canal Company, Cosper-Wilson Canal Company, Cosper and Windham Canal Company, Duncan Canal Company, Frisco Placer Mining Company, Gold Bullion Mining Company, Greenhorn Irrigating Canal Company, Martin & Pearson Ditch, Martin & Pearson Irrigating Canal, Moddle Canal Company, Morenci Water Company, Shriver Ditch Company, Sunset Canal Company, Sunset Irrigating Canal Company, Valley Canal Company, White Mountain Lumber Company, York Canal Company, and York Cattle Company are corporations doing business in Greenlee County in said District of Arizona.

(d) That certain others of said defendants, to-wit: American Smelting and Refining Company, Arizona Hercules Copper Company, Aztec Mutual Canal Company, London Gila Mining Company and Phelps Dodge Corporation are corporations or associations authorized under the laws of the state of Arizona to do business in the District

of Arizona, having their principal places of business in the District of Arizona.

(e) That the defendant, the Nevada Consolidated Copper Company is a corporation duly organized under the laws of the State of Maine and authorized to do business in the District of Arizona.

(f) That certain others of said defendants, to-wit: Cosper-Windham Canal Company, Franklin Canal Company, Greenhorn Ditch Company, Nichols and Company, Sunset Canal Company, and Valley Canal Company are corporations doing business in the District of New Mexico, County of Hidalgo.

(g) That the Billingsley Canal Company, Black and McCleskey Canal, Rucker Ditch Company, Sexton Ditch Company, and Shriver Ditch Company are unincorporated canal companies engaged in the diversion and distribution of water from the Gila River for the irrigation of lands within the said Franklin Irrigation District.

(h) That certain others of said defendants, to-wit: A. Allen, A. A. Anderson, Mary A. Antanoil, State of Arizona, Estate of Walter A. Baitty, Homer H. Martin, Administrator, J. W. Baker, Henry Bamesberger, Ruth R. Barham, W. B. Barham, Estate of Thomas Barrett, Dan T. Peart, Administrator, Archie L. Bartlett, Pansey Kenower Bartlett, Madelene Bassler, Maude M. Bassler, Otis J. Baughn, Albert C. Becken, Grace R. Becken, Charles F. Bennett, George P. Bennett, Jarvus D. Bennett, J. M. Biddle, Estate of Paul C. Blackmore, Peter Corpstein, Administrator, Frances D. Blair, Clifton Bogard, C. D. Bradley, Ida M. Bradley, John R. Bradshaw, Ira S. Brayton, Esther A. Brockway, George M. Brockway, Marshall F. Brockway, Martha M. Brockway, Charlotte Hall Brown, Elizabeth

Brown, J. P. Brown, Estate of W. F. Brown, P. D. Overfield, Administrator, Sarah B. Brown, Thresa Hall Brown, John J. Buggs, George W. Burgess, Burris Brothers, John W. Burris, Lee Robinson Burris, L. B. Cadwell, Ella Carpenter, Fred E. Carpenter, Casa Grande Valley Bank, Louis Cathemer, Mike Celeya, Estate of W. B. Charlton, John E. Charlton, Administrator, Albert J. Christensen, Earl G. Clemans, Hazel H. Clemans, Mark Twain Clemans, W. J. Clemans, Jr., Winnefred W. Clemans, W. P. Clements, Mrs. Charles E. Cleveland, Inez H. Conrad, Thomas A. Crow, Jennie Davidson, John H. Dennison, Pearl Dennison, Robert Denton, Maurice Dodd, John Eastman, Tracy Eastman, Christobell G. Ellis, Joe Erny, Jose T. Espinosa, Jesus Espinosa, Feliz Brothers, Salvadore S. Feliz, Manuel S. Feliz, Pedro S. Feliz, Juan S. Feliz, Fidelity Savings & Loan Association, First National Bank of Florence, C. A. Fitzgerald, Town of Florence, J. J. Fraser, James D. Freeman, Lissa J. Fulton, May E. Furhack, Kathrina Gack, Estate of George F. Gallagher, Robert Denton, Administrator, L. D. Gamble, Richard B. George, Richard E. Geyler, M. L. Gilbert, John MacGregor Goodale, Nellie R. Gochenover, George F. Graham, Joseph Green, Virginia Griffin, Virginia Hales, Mattie M. Hall, Frank E. Hamilton, John Hamilton, A. T. Hammons, Rec., May Catlin Hansen, J. B. Harsha, Vernon W. Havins, A. W. Heath, Jacob Helfenstein, John Hendricks, W. E. Herron, Arthur Houser, Edith B. Jamieson, J. C. Jamieson, F. P. Jamieson, James C. Jayne, E. R. Johnson, John A. Johnson, Mary Johnson, Richard J. Jones, Julia R. Julian, Fred R. Kenower, Ola R. Kenower, H. B. Klingenberg, William C. Knight, Anna E. Kochsmeier, Frederick Kochsmeier, Henry Kochsmeier, Sr., Henry D. Kochsmeier, Sr., Maria Kochsmeier, Gustaf Kratzka, James J. Kruse, J. E. LaFleur, W. W. Lane, Dirk Lay,

Elizabeth L. Lay, Lola LeBaron, Louise LeBaron, Estate of Lola W. Lee, Dan T. Peart, Administrator, J. T. Lewis, David A. Little, Minnie Lobb, Lula O. Lockerd, Estate of W. H. Lonergan, T. A. Lonergan, Administrator, May H. MacBennett, A. L. McCann, Alpha E. McCann, Minnie M. McCann, James K. McCarty, Carrie McDowell, M. W. McDowell, Clara B. McFarland, Ernest W. McFarland, Gertrude B. McGee, Glen G. McKenzie, Elizabeth P. McMurray, Melanie Mandell, Rita Marquez, Ralph K. Marshall, Ivey Marshall, Joe Marta, David Omer Martin, Ben B. Mathews, Josiah J. Maxcy, R. D. Melick, Lillian C. Merchant, Martha M. Merrill, John B. Michia, R. M. Miller, J. L. Mills, Lillian I. Mitchell, Henry G. Moeller, Sidney B. Moeur, Fayette Moore, Ethel M. Moorehouse, H. W. Moorehouse, Rolland H. Moorehouse, Vashti B. Moorehouse, Margarete L. Murphy, J. S. Murry, L. S. Nafziger, M. N. Nafziger, S. W. Newman, C. H. Niemeyer, John O'Brian, Lillian O'Connor, Olive J. O'Connor, Lewis Olesen, Antonio S. Padilla, Florence Palamounter, Howard G. Palamounter, Lee Patrick, Roy F. Patrick, Harriet E. Pattee, George W. Pattee, Estate of Earl P. Patterson, Willie K. Pearson, W. J. Pennington, Amandus C. Peters, Addie Phillips, Margaret E. Pierce, Pinal Investment Company, Frank Pinkley, Ely E. Piper, W. M. Pollack, Grace P. Pottebaum, Robert H. Pottebaum, Estate of W. Y. Price, Mrs. W. Y. Price, Lloyd W. Prouty, W. Scott Prouty, Edwin Ralph, John Ralston, Margaret T. Randall, Henderson H. Raybourn, A. V. Read, Martin J. Reed, Fern M. Richardson, H. G. Richardson, Jennie Roberts, Ralph M. Rounds, Andris V. Salazar, Christiana Salazar, Estate of Elizabeth Schultz, William J. Schulze, Charles M. Schwab, Emma B. Schwarm, Clara C. Seagoe, George P. Sellers, Charles M. Shannon, Elizabeth Shannon, Mary L. Shannon, Walter Shayeb, Charles M. Sheafe, Helen S. Sheafe,

Mary S. Sheafe, James S. Sheafe, Chloren B. Shifflet, John Sigfrid, Carrie S. Sigler, George W. Sigler, J. OL. Simmons, Edward H. Sinclair, Charles R. Sligh, Earl F. Smiley, George W. Smith, Ole H. Smith, Southern Arizona Bank & Trust Company, Herbert G. Sparks, G. C. Springer, Mary E. Stevens, Dugald Stewart, T. V. Stokes, Walter W. Stovall, Tim Sullivan, Surety Abstract & Realty Company, J. C. Swan, Estate of John W. Sweeney, Sam Sweeney, Administrator, S. E. Tellyer, Phoebe C. Templeton, Frank A. Thackery, Estate of Della Tharp, Estate of James Tharp, Edward Tharp, Administrator, Augusta Thor, Fred Thor, H. D. Thornton, Mae Tiffiny, Mrs. Billie Treat, James R. Treat, Don A. Trekell, Louise M. Trekell, S. Louise Trekell, E. S. Turville, Mrs. A. C. Urban, F. A. Urban, Augustine Villar, Joe Villar, Valley Bank of Phoenix, Calbert Vance, Viola C. Vance, Ed G. Van Haren, Estate of Jose Vasquez, Charles F. Bennett, Administrator, Gregorio Vasquez, Bert Vidans, George P. Walker, Fannie Wallrich, A. A. Walsworth, Harry Ward, Roy S. Ward, C. E. Waterbury, Josie Waterbury, Katie E. Weaver, Adolphus Weyrick, Natalia M. White, W. G. Williams, Josephine H. Wills, Sophia Wind, Soren Yensen, and Elsie DeWolf Zellweger, are defendants with interest in common with the United States, plaintiff herein, by reason of contractual relations entered into by them with the said plaintiff, the United States of America, in the year 1919, and which agreement provided for the inclusion of certain lands within the hereafter mentioned Florence-Casa Grande Irrigation Project, the objects and intention of said agreement being more particularly hereinafter set forth in Paragraph 12 of this Bill of Complaint.

(i) That certain others of said defendants, to-wit: J. L. Aker, D. E. Barlow, J. R. Beavers, Florentino Billaba, C.

M. Brooks, R. W. Brooks, S. A. Brown, J. E. Cardon, W. L. Cauthen, H. G. Davidson, Bank of Duncan, Byron Echols, M. B. Echols, Joseph C. Elledge, W. F. Foster, Estate of Jasper Gale, Grivio Gonzales, H. Grady, M. L. Harris, C. F. Houlihan, M. J. Jensen, J. B. Johns, R. T. Johns, Delbert Johnson, D. L. Johnson, G. W. Johnson, F. W. Jones, John B. Jones, Mary Jane Jones, Parley P. Jones, T. V. Jones, Willard E. Jones, A. T. Layton, W. W. Lloyd, Anna H. Lunt, G. V. Lunt, Owen Lunt, P. L. Lunt, R. H. Lunt, M. J. McClaren, E. A. Merrill, Orson A. Merrill, Fenley F. Merrill, T. S. Merrill, James A. Mitchell, Arven Mortensen, Hans Mortensen, Hiram K. Mortensen, Joseph A. Mortensen, Peter Mortensen, T. J. Nations, Mrs. J. O. Pace, W. C. Pa[illegible]r, E. C. Payne, G. O. Payne, H. M. Payne, Junius E. Payne, Leslie B. Payne, C. Pirtel, R. Richardson, Frank Shriver, W. F. Shriver, Henry L. Smith, M. E. Stewart, S. Stewart, W. Plune Tibbets, Peter Wahlin, B. Y. Whipple and Mrs. T. M. Williamson are residents of Hidalgo County in the State of New Mexico.

(k) That as plaintiff is informed and believes and therefore alleges each and every of the defendants whose names are not mentioned above are citizens and residents of the State and District of Arizona.

5. That the Pima Indians, from time immemorial until the first reservation was made for them by the United States, as hereinafter described, occupied and possessed a large area of land on the Gila River in the State and District of Arizona, which area included the lands now embraced in the Gila River Indian Reservation. When the first White Men visited that region, they found these Indians irrigating from the Gila River extensive areas of said land, and raising large crops thereon. These Indians then numbered about as many persons as they do to-day,

which is approximately 5,000. They claimed a larger area along the Gila River than that now embraced in their reservation, but later agreed with the United States to accept their present boundaries. The land they occupied, including those comprising their present reservation, are arid and to produce crops require irrigation. The Indians at all times have held and now hold, under the Indian title of occupancy and possession, the lands now comprising the said reservation.

6. The Gila River is an innavigable stream which flows through the said reservation from east to west. With the lands of said reservation, the Pima Indians also did and do occupy and possess to a large extent the usufruct of the waters of the Gila River, and with said waters at all times have irrigated large areas of said lands. The waters thus possessed by said Indians are a quantity sufficient to irrigate the lands subsequently allotted to them as irrigable allotments, said allotments being made to individuals among said Indians and amount to 49,896 acres; and also enough water to irrigate such parts of said reservation as have come to be used for a school farm, agricultural experiment station, and for other administrative purposes. The areas of this latter character comprise approximately 650 acres. The waters so occupied amount to 632 second-feet running continuously throughout the year, but with a limitation for each year of 252,730 acre-feet of water. Suchwaters, to the extent that they have been used thus far for irrigation, have been diverted through numerous canals having their headings within said reservation, and they are now to be diverted through the same canals, and also by means of the Ashurst-Hayden dam, situate about ten miles above the town of Florence, Arizona, and the Sacaton dam, situate on said reservation. The priority of

the rights of said Indians and of the United States to said waters is of immemorial date.

7. The United States, on its acquisition from Mexico (by the Treaty of Guadalupe-Hidalgo and the Gadsden Purchase) of the territory within which are the lands occupied by the Pima Indians (and also those occupied by the Apache Indians, rights concerning which are hereinafter described), became and ever since has remained the guardian of the Indian inhabitants, including the said Pimas and Apaches, and became the owner of the soil of said territory (with the exception of that contained in certain Spanish and Mexican grants theretofore made, but not relevant here). The title of the United States to the lands thus acquired from Mexico also as just stated was encumbered by the aforesaid title of occupancy and possession of the Pima Indians and by a like title of the Apache Indians. The United States, upon such acquisition, furthermore became the full sovereign of said territory, having both national and municipal or state sovereignty; and it had plenary power over said lands and waters.

(a) There after, the United States, by a series of Acts of Congress, proclamations and executive orders, including the following: Act of February 28, 1859 (11 Stat. 501); Executive Orders of date August 31, 1876, January 10, 1879, June 14, 1879; May 5, 1882; November 15, 1883; May 2, 1911; July 31, 1911; December 16, 1911; June 2, 1913; August 27, 1914; March 18, 1915; and July 19, 1915, recognized that the lands and waters above described belonged to the Pima Indians under their title of occupancy and possession, and confirmed and made more secure those rights as far as they covered or related to said reservation, and reserved for said Indians the lands and

water rights comprised in or connected with the Gila River Indian Reservation. The lands in said reservation are situate in the Counties of Pinal and Maricopa, and comprise about 375,422 acres. The reservations thus made have been approved, ratified, confirmed, and recognized, and the purposes connected with them have been carried out by numerous Acts of Congress and proclamations and executive orders. Furthermore, the United States, ever since said Gila River Indian Reservation was established, has maintained thereon extensive schools, administrative offices and other facilities for carrying out the Federal Indian policy and for educating the Indians of said reservation and helping them to acquire the habits of civilized life.

(b) The water rights reserved in connection with the reservation of said land for the Pima Indians are alleged to be the following-to-wit: So much of the waters of the Gila River as should be needed to carry out the purposes of the United States in recognizing and in making said reservation of lands, and also in accomplishing the civilization and bringing about the prosperity of said Indians. The said rights amount to the same quantities of water as stated in the foregoing article 6, to-wit: 632 second-feet of the waters of said Gila River running continuously throughout the year but with a limitation for each year of 252,730 acre-feet of water. Said rights have an immemorial priority as set forth in Paragraph 6 as well as of the date of said first reservation, which was February 28, 1859.

8. The Pima Indians, from the time of the first knowledge of white man concerning them, and previous thereto, and before any appropriations or uses of waters of the Gila River by White Men, and until and including the present time, have irrigated with the waters of that river large

areas of the lands now included in their said reservation and allotments, and cultivated crops upon them, through various canals and ditches, many of which ditches are, and even in ancient times were, of large size. The lands so irrigated, as shown by surveys made in recent years, of present and past cultivated areas, amount to not less than 28,000 acres.

(a) The United States, therefore, is entitled to and claims on account of said Indians, as mere appropriators with an immemorial priority, the use of 350 second-feet of water, continuous flow, from said river, with a yearly limitation of one hundred forty thousand (140,000) acre-feet.

9. The Apache Indians, at a long time antedating the acquisition by the United States of the lands ceded as aforesaid by Mexico, occupied and possessed and owned, under the Indian title of occupancy and possession, subject only to whatever rights of a like nature their neighbors and enemies, the Pima Indians, had, a large area which included that now reserved to them by the establishment of their reservation known as the San Carlos Indian Reservation. This reservation is comprised of one million, eight hundred thirty-four thousand, two hundred forty (1,834,240) acres, and is situate in Gila and Graham Counties, in the state and District of Arizona.

(a) The said Apache Indians were hunting and war-making Indians, and were confined in the above-described area, which was smaller than that over which they formerly roamed and which they formerly claimed; said confinement was the result of wars and agreements, and the said reservation was made pursuant to the policy of the United States with regard to said Apache and other

Indians, of inducing them or compelling them to confine themselves to definite areas and of teaching them through agriculture and otherwise, to adopt the ways of civilized life. The aforesaid reservation for said Apache Indians was made as an addition to the White Mountain Reservation theretofore established, and the proclamations and executive orders creating it include the following dates:

> December 14, 1872; August 5, 1873; July 21, 1872; October 30, 1876; January 26, 1877; March 31, 1877; December 22, 1902; February 17, 1912.

(b) The Apache Indians above-mentioned, with other Indians admitted to share their rights with them, number some twenty-six hundred (2600) persons, some five hundred (500) of whom live upon the Gila River proper, while the rest live upon the Gila River proper, while the rest live upon the San Carlos River. These Indians are entitled by their rights of occupancy and possession and on account of the reservations thus made, to sufficient water for the irrigation of the lands deemed necessary for them to irrigate from the Gila River, excluding the San Carlos River, three thousand (3,000) acres of land, which lands are of a good agricultural character and are susceptible of irrigation from said stream and require irrigation to make them capable of producing crops. The amount of water to which the United States and the said Indians are entitled, on said account, is 37½ second-feet of continuous flow, with a limitation of fifteen thousand (15,000) acre-feet per year. The said water rights has a priority, antedating all priorities of white persons and as of the date when the Apache Indians first came to occupy said territory, which was before the United States or Mexico acquired sovereignty thereof, as well as a priority as of the date of said first reservation, which was December 14, 1872. Said

reservation was made at a time when the United States had both national and municipal sovereignty and plenary power with regard to the disposition of said lands and waters.

10. The Indians of said San Carlos Reservation irrigated with the waters of the Gila River, exclusive of the waters of the San Carlos River, through a number of ditches on their reservation aforesaid, from the year 1873 to the year 1900, and since, beginning with 100 acres and increasing to 2,500 acres of land in the year 1900, and on account thereof the United States is entitled, as a mere appropriator, to 32 second-feet of water, continuous flow, with a limitation of 12,800 acre-feet of water per annum, with priorities as of the dates of original and increased irrigation, and all prior to the year 1901.

11. From the time of the first establishment of the Gila River Indian Reservation as aforesaid, until the passage of the Act of Congress of May 18, 1916, described in the next Article hereof, the United States, in carrying out its policy with regard to the Indians of said reservation, did many things on and connected with said reservation to aid said Indians in irrigating their lands, and was supported therein by the individual and group efforts of the Indians themselves. Among said things have been the improvements of old Indian canals and the construction of new ones, including the building of the new San Tan Canal on the north side of the said river, through the Reclamation Service, in 1906, at an approximate cost of Five Hundred Thousand ($500,000.00) Dollars; the construction of the Sacaton Dam, which is just now being completed at a cost of approximately Seven Hundred Thousand ($700,000.00) Dollars; the improvement of the Little Gila Canal with laterals therefrom, a work accomplished under a number

of subordinate projects, among which are the Little Gila and Island Projects, under which was expended approximately Seventeen Thousand ($17,000.00) Dollars, and the Casa Blanca Canal Project, under which was expended about Twenty-five Thousand ($25,000) Dollars. The United States duly posed and recorded Notices of Appropriation in respect to each of said enterprises in conformity with State law. The work under said Projects has been and is being diligently prosecuted; the acts done under them have been for the purpose of irrigating all of the aforesaid allotments of the Indians of said reservation, or allotments which may be substituted therefor, except possibly a comparatively small number of such allotments comprising not more than 1,300 acres which can be irrigated best with water from the Salt River. Said acts were also for the purpose of irrigating the lands on said reservation utilized by the Government for administrative and agricultural experiment station purposes. Said areas aggregate approximately 650 acres.

(a) The aforesaid activities of the United States were undertaken and carried out in furtherance of the Indian occupancy and reservation rights hereinbefore set forth, and have been prosecuted with diligence. Said activities entitle the plaintiff to water rights and priorities as aforesaid of immemorial date as well as of the date of said first reservation, and as mere appropriations as of the dates of the posting of said Notices and the doing of said acts.

12. Under the Act of Congress of May 18, 1916, heretofore referred to, the United States, through the Secretary of the Interior, promptly settled water rights between all but a few of the White landowners and water users of the Florence-Casa Grande Valley and the United States on

account of the Pima Indians, and undertook and established the Florence-Casa Grande Project.

(a) The United States, in furtherance of said Project, supplementary to other rights therefor hereinabove set out, on May 22, 1916, duly gave notice of appropriation and reservation of waters of the Gila River for said Project by posting a notice at the site of the dam named below, and recording the same, and otherwise. The amount of water claimed under said notice was 2,000 second-feet.

(b) That Project contemplates the irrigation of at least 62,000 acres of land, with the idea that approximately 35,000 acres shall be Indian lands embraced in the allotments aforesaid and including the said administrative lands, and 27,000 acres of White lands in the Florence-Casa Grande Valley. The work in connection with said Project was promptly begun and has been diligently prosecuted from the time of its inception under said Act in 1916 and from the time of said notice, and is now being so prosecuted. The Ashurst Hayden diversion dam, which is one of the structures of said Project, was finished in the year 1922, and cost approximately Two Hundred Fifty Thousand ($250,000.00) Dollars. From that dam run the canals of the Project which take the water to the Indian and White distributing systems thereof. Sand canals have largely been completed, and to date have cost approximately Seven Hundred Fifty Thousand ($750,000.00) Dollars, and, together with said dam, are adequate to divert and in fact have a capacity of more than 1,000 second feet.

(c) Certain White persons, owners of the 27,000 acres of lands aforesaid which were taken into the Casa

Grande Project, by themselves and their predecessors in interest, by the posting of notices under the Territorial and State laws, by diligent construction of works, diversion and carriage of the waters of the Gila River to their lands and application thereof to beneficial use thereon, and acquired vested rights by appropriation to said waters as of various dates (as stated in the Lockwood Decree and Order of the Secretary of the Interior hereinafter referred to), which, in the aggregate, with certain 1915 priorities given under said Project, amounted to 337.5 second-feet with a limitation of 135,000 acre-feet per annum, and granted and conveyed the same to the United States for use in connection with said Project at or about the time of the above-mentioned settlement of rights therefor. Descriptions of the several tracts of land supplied by the aforesaid rights, and descriptions of said rights and their respective extents and the priorities thereof are contained in the Order of the Secretary of the Interior made April 22, 1920, designating the White lands to be included in the Florence-Casa Grande Project, and in the original and supplemental decree of the Superior court of Pinal County, Arizona, made in the case of Lobb v. Avenente, et al, and commonly called "the Lockwood Decree."

The Acres and Priorities fixed in said Order as follows:

No. Acres	Priority	No. Acres	Priority
36	1868	40	1869
156	1869	20	1869
95	1869	40	1869
20	1868	40	1869
20	1868	40	1869
40	1868	60	1869
80	1868	8	1869

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368	1868	15	1869
10	1868	40	1869
54	1868	80	1869
78	1868	160	1859
63.33	1868	40	1869
		40	1869
43.33	1869	8	1869
5	1869	40	1869
19.13	1869		
55.87	1869	5	1872
20	1869	20	1872
20	1872	80	1892
140	1872	20	"
17	1872	20	"
80	1873	6	1893
80	"	160	1893
		160	"
17	1874		
		10	1894
160	1875	10	"
149	"	15	"
		40	"
80	1876	65	"
20	1876	12	1894
40	"	40	"
35	"		
		11	1895
20	1877	50	"
40	"	60	"
26.66	"	20	"
20	"	15	"
53.33	"	15	"
		10	"
30	1878	80	"
		80	"
40	1879	8	"
10	"	5	"
40	"	35.29	"

40	"	39.71	"
80	"	10.29	"
		10.44	"
37	1880	113	"
		7	"
26.66	1884	80	"
		50	"
24	1886	0.57	1895
70	1889	20.	1896
80	1889	20	1896
25	"	25	"
30	"	10	"
		20	"
3	1890	80	"
20	1890	95	"
40	"	40	"
80	"		
		4.21	1898
12	1891	4.01	"
120	"	20	"
120	"	10	"
16	"		
80	"	5	1899
40	"		
160	"	40	1901
230	"		
6	"	45	1904
30	"		
160	"	80	1908
		40	1908
40	1892	80	"
80	"	230	"
160	"	Priorities Grouped as of	
50	1909	2	Jan. 2, 1915.
40	"	30	"
20	"	43	"
120	"	60–	"
40	"	40	"

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		40	"
3	1910	40	"
15	"	160	"
34	"	160	"
80	"	44	"
		103	"
160	1911	40	"
		20	"
60	1912	80	"
80	"	50	"
		77	"
20	1913	90	"
160	"	20	"
160	"	80	"
150	"	15	"
80	"	30	"
80	"	35	"
400	"	30	"
160	"	20	"
30	1914	40	"
70	"	45	"
160	"	44	"
60	"	10	"
25	"	5	"
150	"	20	"
160	"	5	"
160	"	23	"
12	"	20	"
		20	"
Priorities Grouped		30	"
as of Jan. 1, 1915		30	"
320	"	30	"
56	"	50	"
53.34	"	40	"
10	"	5	"
9.5	"	20	"
4	"	25	"
80	"	125	"

40	"	35	"
56	"	20	"
97	Jan. 1, 1915	20	Jan. 2, 1915
40	"	10	"
2	"	30	"
16.33	"	30	"
10	"	40	"
20	"	160	"
25	"	10	"
5	"	20	"
35	"	40	"
10	"	10	"
20	Jan. 2, 1915	5.5	Jan. 3, 1915
5	"	90	"
12	"	10	"
		63	"
5	Jan. 3, 1915	70.2	"
80	"	160	"
60	"	10	"
320	"	5.82	"
320	"	8	"
160	"	40	"
160	"	10	"
640	"	40	"
320	"	80	"
80	"	28	"
160	"	14	"
160	"	23.11	"
60	"	10	"
160	"	300	"
160	"	10	"
80	"	160	"
120	"	480	"
80	"	640	"
160	"	60	"
320	"	160	"
5	"	160	"
55	"	80	"

60	"	160	"
20	"	40	"
160	"	160	"
160	"	160	"
40	"	160	"
33	"	160	"
50	"	120	"
35	"	20	"
15	"	40	"
80	"	160	"
160	"	39.92	"
43.2	"	160	"
145	"	80	"
40	"	74.96	"
35	"	80½	"
20	"	80	"
320	"	150	"
40	"	158.4	"
20	"	160	"
18	"	36.61	"
10	"	160	"
260	"	160	"
240	"	320	"
160	"	80	"
1.08	"	160	"
20	"	160	"
160	"	120	"
30.2	"	157	"
40	"	40	"
125	"	160	"
360	"	320	"
20	"	80	"
80	"	40	"
160	"	240	"
20	"	40	"

TOTAL 27,000 ACRES.

Descriptions of the several tracts of land covered by the aforesaid rights are set forth in the Order of the Secretary of the Interior made April 22, 1920, designating the White lands to be included in the Florence-Gasa Grande Project.

(d) Also, at that time, there were conveyed to the United States, in connection with and f use upon said Project, many inchoate water rights owned by said White persons and others connected with them and acquired in the manner aforesaid. Said rights include those initiated and claimed by the Casa Grande Valley Water Users' Association, which Association partly constructed a large canal which was later purchased and taken over by the United States, at a cost of Fifty Thousand ($50,000.00) Dollars, and is now in process of completion by the United States as one of the main canals of said Project. Said Association spent in the construction of said canal upwards of Eighty Thousand ($80,000.00) Dollars.

The United States claims, on account of said reservation and as a mere appropriation, for said Project, 775 second-feet of water, continuous flow, with a limitation of 310,000 acre-feet per year, with a priority as of the date of the passage of said act, which was May 18, 1916, as well as of the date of the posting of said notice, which was May 28, 1916; and claims on account of said conveyed vested rights of White personsm337.5 second-feet of water, continuous flow, with a right of storage in the Picacho Reservoir, and with a limitation of 135,000 acre-feet per annum, with priorities as in said order mentioned.

13. The United States, before the year 1896, and before the passage of the Reclamation Act (Act of June 17, 1902,

32 Stat. 388), made examinations of the water resources of a considerable part of the United States, through the Geological Survey, in anticipation of the adoption by the United States of the so-called Reclamation Policy. Among the water resources examined were those of the Gila River, and the fact, which even at that time had long been known, was by such examinations confirmed, that the so-called San Carlos Reservoir Site was the most important site for a reservoir on the Gila River, and one of the most important sites for an irrigation reservoir anywhere in the southwestern part of the United States,

(a) The United States, by such investigations and the appropriations of Congress authorizing and supporting them, initiated at that time, which was prior to 1900, the so-called San Carlos Project. The site for the dam and the site for the reservoir of said Project are situated on the aforementioned San Carlos Indian Reservation, which Reservation, as before stated, was set aside for the Apache Indians on December 14, 1872. From the earliest days of the consideration of the San Carlos Project, the United States set apart, protected and reserved the said dam and reservoir sites for the purposes of said Project, and thenceforward, by numerous Acts of Congress and acts of the executive branch, refused to permit encroachments upon said sites, and preserved the same for the purposes of said Project.

(b) The United States, in further carrying out the San Carlos Project, so constructed and organized its Florence-Casa Grande Project, hereinbefore described (all of the lands of which are expected to be included in the San Carlos Project), as to make it suitable for utilization in connection with the San Carlos Project. The United States, in still further carrying out and protecting said

San Carlos Project, and in order to preserve from encroachments the waters necessary therefor, and to make the waters of the Gila River, not theretofore appropriated by and vested in others, available for irrigation of the lands of said Project, whether said lands should be below or above the said proposed Coolidge Reservoir, reserved, among other things, dam and reservoir sites upon the Gila River, by executive orders as follows: January 18, 1906; December 18, 1909; March 1, 1912; March 18, 1915; February 1, 1917; March 21, 1917; March 15, 1920; May 25, 1920; October 23, 1924; and November 22, 1924.

(c) By the Act of June 7, 1924, entitled "An Act for the continuance of Construction Work on the San Carlos Federal Irrigation Project in Arizona" (which is the San Carlos Project heretofore referred to (43 Stat. 475, 476) "and for Other Purposes", the Secretary of the Interior is authorized to construct, under a limit of cost of Five Million, Five Hundred Thousand ($5,500,000.00) Dollars, a dam at the said San Carlos reservoir site, and to create said reservoir; and pursuant to said Act, work is being diligently prosecuted to complete said project.

(d) It is contemplated that said Project will irrigate: (1) the irrigable allotments (each of which embraces ten irrigable acres) made to the Indians of the Gila River Indian Reservation and now held by them under trust patents, or any other allotments which may in individual cases be substituted therefor, together with the administrative areas above alleged; (2) the 27,000 acres of White lands now embraced in the Florence-Casa Grande Project; (3) such a quantity of White lands as, with the foregoing Indian and White lands, will make up one hundred thousand acres, and (4) such additional lands as it shall be found feasible to irrigate as a part of said Project.

(e) The said Reservoir, by the Act of Congress of June 7, 1924, (43 Stat. at Large, 475, 476), as planned for and being built, has been named the "Coolidge Reservoir" and will have a capacity of 1,285,000 acre-feet of water; and, in order to give proper service and make economical use of the water resources of the said Gila River and of the resources of said reservoir, it will have to be filled and kept filled by the waters of said river as often as the yield of said river permits, and said waters as thus stored are and will be necessary for the proper irrigation of the lands included within said Project as above described.

(f) The United States, by undertaking said San Carlos Project, as aforesaid, and by steps made in connection therewith, has reserved and appropriated of the waters of the Gila River sufficient water to fill and keep full said reservoir, as aforesaid, with a priority as of not later than the year 1896. The United States has also, by said acts, reserved and appropriated whatever water, if any, may be necessary from the Gila River, to be diverted at the Ashurst-Hayden dam and the Sacaton Dam for the irrigation of lands lying below said points of diversion which will be included in said Project.

14. By reason of the things hereinabove set forth, the United States has reserved and appropriated, acquired and owns, and is entitled to use for said Indian reservations, the Florence-Casa Grande Project and the San Carlos Project, in the waters of the Gila River, the rights hereabove enumerated, the same being briefly stated as follows:

(a) 632 second-feet of water, with a limitation of 252,730 acre-feet per annum, with a priority of immemorial date, as well as of February 28, 1859, and 350 second-feet with a yearly limitation of

140,000 acre-feet with a priority of immemorial date, to be diverted on the Gila River, but not below the West line of the Gila River Indian Reservation, now reserved as claimed under Articles 5, 6, 7, 8, and 9 hereof, the first figures above-named representing the total diversion under these priorities.

(b) 37½ second-feet of water with a limitation of 15,000 acre-feet per annum, and 32 second-feet with a yearly limitation of 12,000 acres-feet, to be diverted by ditches serving the San Carlos Reservation lands or any lands which may be substituted therefor, or to be stored as claimed in Articles 9 and 10 hereof, with priorities, respectively, as of the year 1846, when the United States obtained sovereignty over that territory, as well as of December 14, 1872, when said San Carlos Reservation was made, and as of the dates from 1873 to 1901, stated in Article 10; the figures first above named representing the total diversion under these priorities.

(c) 775 second-feet of water, with a limitation of 310,000 acre-feet per annum, and 337.5 second-feet with a yearly limitation of 135,000 acre-feet, to be diverted at the Ashurst-Hayden dam and the Sacaton Dam, and at intermediate places on said river, as claimed in Article 11 hereof, with priorities, respectively, of May 18, 1916, as well as of May 22, 1916, and as in the Lockwood Decree and Order of the Secretary of the Interior fixed, as mentioned in Article 12 hereof; the first above-named figures representing the total diversion under the priorities.

(d) Sufficient water to fill and keep filled each year the Coolidge Reservoir aforesaid, which has a capacity of 1,285,000 acre-feet, with a priority

not later than the year 1896, and water directly diverted from the natural flow of said Gila River, as claimed in Article 13 hereof.

15. Each of the defendants, except those who have by contracts devoted their water rights to the said Florence-Casa Grande Project, and the San Carlos Project, and so are interested on the side of the United States in this action, as above set forth, claims some right to divert water from the Gila River as it flows between a line 10 miles east of the parallel to the dividing line between Arizona and New Mexico, and the confluence of the Salt River with the Gila River, and after the following tributaries of the Gila River, the San Francisco River, and the San Carlos River, the San Pedro River, and the Santa Crus River, respectively, have joined, the main stream, and all but a few of said diversions being in the District of Arizona; or the said defendants claim some right to store the water of said river, or of some tributary thereof, either within or above the stretch of the same as just described. The United States has no knowledge or means of knowledge of the exact nature of the claims of the defendants to rights in or the use of said water, but such claimed rights, so far as the United States has knowledge thereof, are numerous, intricate and various, and are conflicting with and adverse to the rights of the United States as hereinabove set forth; and the rights claimed by the defendants, if exercised, would, and when exercised do, diminish the volume of water in said river so as to deprive the United Stets of the amount of water to which it is entitled.

(a) Until the rights of the various claimants, parties hereto, including the United States, to divert and use the waters flowing in said river within the area above defined, or to store such water above, with the extent, nature and

priority of such rights, have been judicially determined, the United States can not properly protect its rights to said waters; and to protect them otherwise than is herein sought, if they could be so protected, would necessitate a multitude of suits.

WHEREFORE THE UNITED STATES PRAYS:

First: That the writ of subpoena issue to each and all of said defendants, and that they be required to answer this complaint and set up fully their claims to the waters of said river within the areas above defined.

Second: That the Court, by its decree, determine the rights of the parties hereto to the waters of said river and its tributaries and the rights of said parties to divert water from said river within the area aforesaid and for storage above, to the end that it may be known how much of said waters may be diverted from said river by the parties hereto and for what purposes, where, by what means of diversion and with what priorities.

Third: That the Court decree to the United States the water rights hereinabove set forth as owned and claimed by the United States, and quiet its title therein, and enjoin said defendants and each of them from interfering therewith, and provide also such means for the carrying out of its decree herein as may be proper.

Fourth: That the United States recover its costs herein and have such other, further and different relief as to the Court may seem just.

And Plaintiff will every pray.

John G. Sargent
The Attorney General of
the United States

By /s/ Edward A. Smith
Special Assistant to the
Attorney General.